

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.840 of 2013

R. Gopal

...Appellant/Petitioner

Vs

1.Senthil Kumar (died) (Since 1st respondent died as per I.A.No.317/2005 3rd and 4th respondent impleaded by Tribunal)

2. The Divisional Manager,
National Insurance co., Ltd.,
No.19, Officer Line, Vellore.

3. Kuppu

4. Malini Respondents/Respondents

(RR 3, 4 remained Exparte in Lower Court)

PRAYER: Civil Miscellaneous Appeal filed to set aside the Judgment and Decree dated 22.07.2010 made in M.A.C.T.O.P.No.366/2004 on the file of Motor Accident Claims Tribunal and Chief Judicial Magistrate, Tiruvannamalai.

For appellant : Mrs. Subadra for Mrs.M.Malar

For respondent-2 : Mr.G.Udhaya Shankar

For Respondents 3 &4 : Ex Parte

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J U D G M E N T

This appeal has been filed by the appellant/claimant seeking enhancement of the compensation awarded in M.C.O.P.No. 366 of 2014 on the file of Motor Accident Claims Tribunal and Chief Judicial Magistrate, Tiruvannamalai.

2.The appellant is the claimant. The first respondent is the owner of the vehicle. First respondent is no more, hence, the 3rd and 4th respondents, who are the legal heirs of the first respondent are impleaded and the second respondent is the insurer of the offending vehicle.

3. It is the case of the appellant that on 17.11.2003 at about 11:00 hours, when the appellant was proceeding in his bullock cart at Thiruvannamalai to Polur Road near Ussampadu Kutu road, an auto bearing Registration No.TN-25-P-0282 came behind the bullock cart of the appellant and dashed against the same. Due to the impact the appellant sustained grievous injuries and he was immediately taken to Thiruvannamalai Government Hospital and thereafter for better treatment he was referred to Government Hospital, Chennai. The accident occurred only due to the rash and negligent act of the driver

of the auto. Hence, the appellant filed a claim petition before the Tribunal, seeking compensation of Rs.5,00,000/- and the Tribunal considering the materials available on record awarded a sum of Rs.73,000/- as compensation with interest at 7.5% p.a from the date of petition till the date of realization.

4. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come forward with this appeal before this Court.

5. In order to prove the claim before the Tribunal, on the side of the appellant two witnesses were examined viz., P.W.1 and P.W.2 and 7 documents viz., Ex.P1 to Ex.P7 were marked. On the side of the respondent, two witnesses were examined and seven documents were marked.

6. Before the Tribunal, the appellant has filed a claim petition, wherein it has been stated that the appellant sustained injuries like fracture of proximal 1/3 right ribula, injury at the back with pain and in the chest. The right leg below knee is bended in shape and the movement is restricted. He was engaged in agricultural work and thereby earning Rs.5,000/- per month. Due to the injuries sustained in the accident, he was not able to continue his job as before. Hence, he prayed to award Rs.5,00,000/- as compensation under several heads.

7. The respondent/Insurance Company also filed a counter before the Tribunal and they have resisted their claim by indicating that the F.I.R, which supports the case of the claimant was a fabricated one. It was also averred in the said counter that the injuries are very simple in nature and the appellant has taken treatment for some other purpose and not for the injuries sustained in the accident. The appellant was hale and healthy. That apart, the Tribunal ought to have verified vital aspects such as R.C.Book, Permit, fitness and also the driving licence of the driver of the lorry before awarding the compensation.

8. On a perusal of the order passed the Tribunal, the negligence aspect was discussed elaborately. The Appellant was examined as P.W.1 and he had deposed in the the chief examination that the auto came behind the bullock cart and dashed against the same. Hence, he was thrown out from the bullock cart, whereas in the cross examination he has deposed that the auto came in the opposite direction and dashed against

the bullock cart. In R.W.2/Motor Vehicle Inspector's report reveals the following damages to the auto: 1. Front fork brokened and damaged, 2. Front windglass brokened 3. Front body dented and damaged 4. Chasis frame at bottom platform bend. 5. Front HL brokened. With regard to the above damages point no.4 and 5 will take place only in the event if the driver lost his control over the vehicle and dashed against the bullock cart. However, the accident occurred due to the negligent act of the driver of the auto. Hence the Tribunal, relying upon the above evidence arrived at a conclusion that the driver of the auto is the cause for the accident. To controvert the same, no new facts or grounds are forth coming by the respondents. Hence, this Court is not inclined to interfere with the findings rendered on the negligence aspect and the same is confirmed as such.

9. With regard to quantum, on the basis of Exs.P.4/wound certificate the Tribunal has awarded a sum of Rs.20,000/- towards Medical Expenses and Transportation charges and also awarded Rs. 10,000/- towards pain and sufferings. Considering Ex.P6/Disability Certificate, the Tribunal has awarded Rs.15,000/- towards disability. Apart from this considering other relevant materials awarded Rs.20,000/- and Rs.8,000/- towards Loss of earning power and Extra Nourishment respectively. Thus, in toto the Tribunal has awarded Rs.73,000/- as compensation.

10. In view of the above this Court observed that no amount was awarded towards attender charges. Hence, Rs.2,000/- is awarded towards the same. The Tribunal has awarded Rs.20,000/- towards Medical Expenses and Transportation, the same is modified as Rs.20,000/- towards Medical Expenses and Rs.5,000/- towards Transportation. All other heads remains intact. Thus, the award passed by this Court is as follows:

S.No.	Amount awarded by the Tribunal	Amount awarded by this Court
Medical Expenses and Transportation	Rs.20,000/-	
Medical Expenses Transportation		Rs.20,000/- Rs.5,000/-
Extra Nourishment	Rs.8,000/-	Rs.8,000/-
Pain and suffering	Rs.10,000/-	Rs.10,000/-
Permanent Disability	Rs.15,000/-	Rs.15,000/-
Loss of earning power	Rs.20,000/-	Rs.20,000/-
Attender Charges	-Nil-	Rs.2,000/-
Total	Rs.73,000/-	Rs.80,000/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed. The second respondent-Insurance Company is directed to deposit the amount awarded by this Court along with 7.5% interest and costs from the date of petition till the date of realization, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made the appellant is permitted to withdraw the enhanced award amount, less the amount if any, already withdrawn.

Sd/-

Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

Smn

To

The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate,
Thiruvannamalai.

Copy To

The Section Officer,
VR Section,
High Court, Madras-104

+1cc to Ms.M.Malar, Advocate SR.No.8852

+1cc to Mr.G.Udhaya Shankar, Advocate SR.No.8512

C.M.A.No.840 of 2014

SSD (CO)

GMV (23/04/2021)

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