



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 28.07.2020

Pronounced on: 31.07.2020

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THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.569 of 2016

Palani,
S/o.Muthusamy,
is residing at D.No.71-A, Aruthathiyar Street,
Moliyapallai Post,
Tiruchengode TK, Namakkal District. ...Appellant/Petitioner

/versus/

1. Arulmurugan,
S/o.Ponnusamy,
D.No.42/9, Pudhupalayam,
Nallipalayam Village, Gandhiashramam Post,
Tiruchengode Taluk, Namakkal District.
(Notice to R1 may be dispensed with for the
set ex parte before the Tribunal)

2. Reliance General Insurance Co., Ltd.,
3rd Floor, Sakthi Super Market Building,
No.408, Perundhurai Road, Erode - 638 011.
...Respondents/ Respondents

Prayer: Civil Miscellaneous Petition is filed under Section 173 of Motor Vehicles Act, 1988, praying against the judgment and decree in M.C.O.P.No.256 of 2014, dated 05.11.2015, on the file of the Motor Accidents Claims Tribunal, Sub Court, Tiruchengode.

For Appellant : Mr.C.Paraneedharan

For R2 : Mr.S.Arun Kumar,

For R1 : ex parte.

J U D G M E N T

(The case has been heard through video conferencing)

This Civil Miscellaneous Appeal for enhancement of compensation is filed by the claimant/ Accident victim.

2. On 15/05/2013 at about 6.30 P.M while the claimant was proceeding towards his home, from South to North, near Morekalipalayam Pannakadu, Rayarpalayam to Karichipalayam Road,



a two wheeler bearing Registration No.TN 34 R 5346 (TVS WEGO) coming on the opposite direction North to South, rash and negligently hit the claimant. The claimant sustained injuries all over his body and was taken to the hospital in an Ambulance. From Government Hospital, he was shifted to Krishna Hospital, Thiruchengodu and treated for his injuries. At the time of the accident, the claimant was 70 years old.

3. Stating that, he was earning Rs.30,000/- per month by breeding cattle, for the loss of present and future earning, transport, nourishment, attender charge, medical expenses M.C.O.P.No.256 of 2014 was filed before the M.A.C.T, Tiruchengode. Claiming Rs.15,00,000/- Rupees Fifteen lakhs as compensation. The 2nd respondent under which the offending vehicle bearing Registration No.TN 34 R 5346 was insured, contested the claim on multiple grounds such as, the vehicle was not involved in the alleged accident. The alleged accident occurred due to the negligence of the claimant who suddenly crossed the road without following the road traffic rules. The driver of the offending vehicle had no driving license. The claimant income and injuries not supported by documents.

4. The Tribunal, on considering the pleadings and evidence, awarded compensation of Rs.54,985/- with 7.5% interest.

5. Aggrieved by the award of Rs.54,985/- as against the claim of Rs.15,00,000/-, the Appeal is filed.

6. The Learned Counsel for the appellant would submit that the Tribunal had awarded a meager amount as compensation against the established Principles and Rulings of the Hon'ble High Courts and Supreme Court. P.W-2, the doctor, who assessed the injuries had issued the disability certificate Ex.P-9. The Tribunal has failed to consider the evidence of P.W-2 and Ex.P-9. As against the permanent disability of 28% assessed by the doctor P.W-2, the Tribunal has fixed only 8% disability. The Claimant has lost his earning capacity due to the injuries sustained in the accident. The Tribunal failed to take note of the functional disability sustained by the claimant. The compensation awarded for pain and sufferings, transport, extra nourishment also not in accordance with the Principles laid down by the Hon'ble Supreme court.

7. Per contra, the Learned Counsel for the 2nd respondent/Insurance company would submit that, there is no error in the award under challenge. The learned Tribunal has given its reasons for differing with the disability certificate given by the doctor. P.W-2 was not the doctor, who treated the claimant. The disability certificate is without any details and reasoning. The Claimant who sustained fracture of occipital bone



and left temporal bone was treated as impatient from 15/05/2013 to 25/05/2013. The Tribunal has assessed the disability at 8% and had awarded compensation of Rs.16,000/-. As far as medical expenses, the Tribunal has granted Rs.31,985/-, based on the bills produced. The exorbitant claim of Rs.5,90,000/- under this head was rightly declined by the Tribunal since the other claims was not supported by bills. The claimant was about 70 years at the time of accident. After the treatment, he recovered and resumed his normal life.

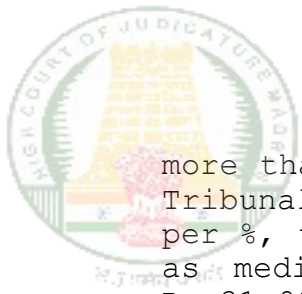
8. Heard the Learned Counsels appearing for the respective parties.

9. The main contention of the appellant is that, the Tribunal assessment of disability at 8% is very low and contra to the doctor certificate. Further, the award of compensation in other heads also very low and meagre contrary to principle laid down by the Higher Courts. At the time of accident, the claimant was 70 years old. Though he claims to be breeder of cattle and earning Rs.30,000/- per month, he has not produced any evidence to show his income. There is also no evidence to substantiate that the accident has caused impairment to the earning capacity of the claimant.

10. To establish the injury, treatment and disability, the claimant has examined two witnesses the doctor who treated him and issued discharge certificate and the doctor who examined him later and given the disability certificate. The Tribunal, on considering the evidence of these two witnesses and the discharge summary Ex.P-6 and the disability certificate Ex.P-9 had fixed the disability at 8%.

11. The claimant immediately after the accident has gone to the Government Hospital, Thiruchengode. There he was given first aid. The Accident Register indicates that he was unconscious and not responding. Immediately, he was taken to the Krishna Hospital and admitted as in patient. 1 x 1 cm abrasion on the right side of forehead, 1 x 1 cm abrasion over nose and contusion over occipital area were noticed by the doctor and same is reflected in the discharge summary (Ex.P-6). The discharge summary also tells that the patient (claimant) treated for the injuries by conservative management. Suturing of scalp wound done for the fracture of occipital bone and left temporal bone. While the fact being so, P.W-3 who is not the doctor who treated the injured had given the disability certificate Ex.P-9 indicating the mal united fracture of occipital bone and temporal bone had caused 28% disability.

12. The assessment of disability at 8% is based on the evidence. The nature of injury and the X-ray after treatment does not provide for an inference that the disability will be



more than 8%. This Court finds no error in the assessment of the Tribunal regarding the disability. However, instead Rs.2000/- per %, this Court fix it at the rate of Rs.3000/- per %. As far as medical expenses are concerned, the Tribunal has awarded Rs.31,985/- based on the bills Ex.P-7 series and no change is required under this head.

13. Further, this Court is of the opinion that the considering the age of the victim, the Tribunal ought to have awarded some compensation under the head attender charges and additional compensation for transport, nourishment and pain and sufferings. Hence the award is modified and enhanced as below:

Heads of compensation	Compensation fixed by the Tribunal	Compensation fixed by the High Court.
Transport	Rs.2000/-	Rs 5,000/-
Extra nourishment	Rs.2000/-	Rs 5,000/-
Medical Expenses	Rs.31,985/-	Rs.31,985/-
Pain and sufferings	Rs.3,000/-	Rs 10,000/-
Permanent disability	Rs.16,000/ - (8% x Rs2000)	Rs.24,000/- (8% x 3000)
Attender charges	-----	Rs.6,000/- (Rs 1000 x 6 months)

14. As the result, the total compensation is enhanced from Rs.54,985/- to Rs.81,985/- with interest at the rate of Rs 7.5% payable from the date of numbering the petition till the date of realisation. The respondent is directed to deposit the award amount within 2 months from the date of receipt of the order. On such deposit, the appellant/claimant shall be permitted to withdraw the same on proof and identity.

15. The Civil Miscellaneous Appeal is partly allowed as stated above. No order as to costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

bsm



To,

1.The Motor Accidents Claims Tribunal, Sub Court, Tiruchengode.

2.The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.S.Arun Kumar, Advocate SR.No.25840

C.M.A.No.569 of 2016

MG (CO)
GMY (14/08/2020)