

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM  
C.M.A.No.3311 of 2019

Moorthy ...Appellant/ Petitioner  
Vs.

1.Subramanian

2.M/s.National Insurance Company Limited,  
Hero Vertical 101, 106,  
BMC House, NI Connaught Place,  
New Delhi-110001  
Functioning at 74-A, Paramathi Road,  
Namakkal Town.

..Respondents/ Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment & Decree dated 21.10.2016 made in M.C.O.P.No.607 of 2014 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.C.Thangaraju

For Respondents : Non-appearance for R1  
M/s.N.B.Surekha for R2

J U D G M E N T

The appeal is filed challenging the judgment and decree dated 21.10.2016 passed in M.C.O.P.No.607 of 2014 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.

2. The accident occurred on 20.06.2014 at about 8.00 hrs at Valaiyapatty, Kattuputhoor Mohanur Pirivu Road, near Kuravar Colony. Mohanur Police Station registered a case in Crime No.223/2014 under Sections 279, 338 IPC. The claimant was standing on the left side of the road with his bicycle and a Hero Honda Motor cycle bearing Registration No.TN-48-AZ-2543, dashed against the claimant causing grievous injuries to the claimant all over the body. He sustained fracture in his left leg. He was admitted in CM Hospital, Namakkal and subsequently, in CM Speciality Hospital. Thereafter, the claim petition was filed and the Tribunal adjudicated the issues with reference to the documents and evidence produced by the respective parties.

3. As far as the negligence is concerned, the Tribunal arrived a conclusion that the claimant was standing on the left side of the road along with his bicycle and two-wheeler driven by the driver came in a rash and negligent manner and dashed against the claimant. Thus, the driver of the two-wheeler is responsible and committed an act of negligence. As far as the quantum of compensation is concerned, the learned counsel for the appellant made a submission that the Tribunal has not considered the actual income of the claimant/appellant and the total compensation is inadequate and not in commensuration with the gravity of the grievous injuries sustained by the appellant/claimant. The appellant/claimant underwent surgeries and he was a load man and due to the surgery, he is not in a position to perform his duties in a normal manner. The partial permanent disability is assessed as 40% by the Doctors and therefore, the Tribunal ought to have granted higher compensation by adopting multiplier method.

4. The learned counsel appearing on behalf of the respondent/Insurance Company opposed the contention by stating that the appellant/claimant is not totally incapacitate and he is performing his duties. Undoubtedly, the injuries caused to the claimant are certain partial permanent disability. However, there is no future loss of income as the appellant/claimant is able to perform his duties in a normal manner. The learned counsel appearing for the Insurance Company reiterated that the compensation granted is reasonable one and no interference is required. Accordingly, he made a request to dismiss the appeal.

5. Considering the facts and circumstances, this Court is of the considered opinion that admittedly, the appellant/claimant was working as a Coolie. The monthly income was taken as Rs.4,000/- and the accident occurred in the year 2014. Thus, the monthly income of Rs.4,000/- fixed by the Tribunal is undoubtedly on the lesser side and the same is to be enhanced. The appellant in his claim petition has stated that his monthly income was Rs.7,000/-. The Tribunal ought to have considered atleast a sum of Rs.5,000/- to assess the loss of monthly income, in view of the fact that the appellant/claimant had taken treatment for about three months. Thus, this Court is inclined to enhance the compensation under the head of loss of income. This apart, the period of treatment is also to be taken as six months. Accordingly, the appellant/claimant is entitled for compensation of Rs.30,000/- (Rs.5,000 X 6) towards loss of income. As far as the partial permanent disability is concerned, the claimant had undergone surgery. Further, he being a coolie, would be suffering and it would be difficult for him to perform his coolie works in a normal manner. Thus, this Court is inclined to enhance the disability compensation from a sum of Rs.3,000 for 1% to Rs.4,000/- for 1%. Accordingly, the total compensation of Rs.3,54,870/- granted by the Tribunal is modified as detailed hereunder:

|                             |                 |
|-----------------------------|-----------------|
| (i) Loss of income          | : Rs.30,000/-   |
| (Rs.5,000 X 6)              |                 |
| (ii)Transportation Charges  | : Rs.5,000/-    |
| (iii)Nutrition              | : Rs.20,000/-   |
| (iv)Medical Bills           | : Rs.1,43,870/- |
| (v)Pain and suffering       | : Rs.50,000/-   |
| (vi)Disability Compensation | : Rs.1,60,000/- |
| Total                       | : Rs.4,08,870/- |

6. Accordingly, the appellant/claimant is entitled for total compensation of Rs.4,08,870/- for the interest at the rate of 7.5% per annum. However, the appellant/claimant is not entitled for interest for the delay period which is to be calculated by the Tribunal.

7. Accordingly, the second respondent/National Insurance Company Limited is directed to deposit the entire award amount along with interest at the rate of 7.5% per annum deducting the delay period and deposit the same within a period of 12 weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant/claimant is permitted to withdraw the award amount by filing an appropriate application and the payments are to be made through RTGS.

8. The appellant/claimant is directed to pay the additional court fee, if any, within a period of two weeks from the date of receipt of a copy of this Judgment. Accordingly, the Judgment and Decree dated 21.10.2016 passed in M.C.O.P.No.607 of 2014 stands modified and the Civil Miscellaneous Appeal stands allowed in part. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssb  
To

1.The Motor Accident Claims Tribunal,  
Chief Judicial Magistrate, Namakkal.

+1cc to M/s.N.B.Surekha , Advocate SR.No. 29718

C.M.A.No.3311 of 2019

A.SK(27.04.2021)