

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.3457 of 2019

Krishnan,
S/o. Vellaiyan,
Periya Thottam,
Kalluppalayam,
Pokkampalayam Village,
Sirumolasi Post, Tiruchengode Tk,
Namakkal District.

... Appellant / Claimant

Vs.

1. Rajavel,
S/o. Seenimalaigounder,
No.118-N, Puduppalayam,
Devanankurichy,
Tiruchengode Taluk,
Namakkal District - 637 211.

2. IFFCO-TOKIO General Insurance Co., Ltd.,
138/2, II Floor, LMR Shopping Arcade Opp.,
MGM Theatre, Salem Main Road,
Namakkal. Respondents/ respondents

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the judgment and decree in MCOP No.12 of 2014, dated 12.07.2018 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : R1 - No appearance
M/s.Harini
for Mr . N. Vijayaraghavan,
for R2

J U D G M E N T

Feeling aggrieved with the inadequate compensation awarded by the Motor Accidents Claims Tribunal, Subordinate Judge Court, Tiruchengode in MCOP No.12 of 2014, the present Appeal has been filed.

2. The brief facts leading to file the claim Petition is as follows :

On 17.07.2013, at about 7.30 p.m., while the appellant/claimant was travelling in a two wheeler as a pillion rider in Tiruchengode to Vellore Road, the vehicle bearing Registration No.TN 34 E-5883, belongs to the first respondent herein driven by his driver, came in a rash and negligent manner and dashed against the two wheeler, in which, the appellant sustained grievous injuries. Immediately, he was taken to Tiruchengode Government Hospital, after giving first-aid, he was admitted in Surya Multi Speciality Hospital, Tiruchengode for further treatment. The appellant has suffered permanent disability in the above accident. Due to which, he was not able to perform his duties as before the accident. Hence, he has filed the claim petition seeking compensation of Rs.15 lakhs.

3. The 1st respondent/owner of the vehicle remained exparte and the second respondent Insurance Company contested the claim petition disputing the liability on the ground that the accident was taken place only due to the negligence of the driver of the two wheeler and also disputed the monthly income of the appellant, and the Insurance Company is not liable to pay any compensation.

4. In order to prove his claim, the Appellant/claimant examined himself as P.W.1 and the Doctor was examined as P.W.2 and marked as many as 7 exhibits. On the side of the respondents, the respondent Insurance Company examined 2 witnesses and also marked as many as 5 exhibits.

5. The Tribunal, after considering both the oral and documentary evidence, has come to the conclusion that the accident has been taken place due to the rash and negligent act of the driver of the offending 1st respondent vehicle. So far as the quantum of compensation is concerned, the Tribunal awarded a sum of Rs.87,665/- under various heads, which reads as follows: -

Sl. No	Headings	Amount Rs
1	Medical expenses	27,665
2	Pain and suffering	15,000

Sl. No	Headings	Amount Rs
3	Extra nourishment	10,000
4	Transport to hospital	5,000
5	Partial permanent disability	30,000
	Total	87,665

Being not satisfied with the award of compensation, the appellant has filed the present appeal.

6. The learned counsel appearing for the appellant would submit that at the time of accident, the appellant was an agricultural coolie and he has suffered fracture on the left ankle bone and due to the same, he has suffered permanent disability. At the time of accident, he was earning a sum of Rs.15,000/- per month and he was bedridden for more than six months, however, the Tribunal has not granted any amount for loss of income. That apart, he has been admitted in the hospital for a long time and he has underwent surgery and the Tribunal has also not granted any amount towards attender charges. The learned counsel appearing for appellant has further submitted that since the appellant has suffered permanent disability, he is not able to continue his work as before the accident. But, the Tribunal without applying the multiplier method has simply awarded a sum of Rs.30,000/- towards partial permanent disability. Hence, the appellant seeks enhancement of compensation.

7. Per contra, the learned counsel appearing for the Insurance Company would submit that the appellant has not taken any treatment in the hospital and there is no material available on record to show that he has undergone a surgery and suffered permanent disability. So far as the loss of income is concerned, there is no materials available on record. Considering all those circumstances, the Tribunal has rightly awarded a sum of Rs.87,665/-, and there is no reason to interfere with the well-considered order of the tribunal.

8. I have considered the rival submissions and perused the materials available on records carefully.

9. It is stated that at the time of accident, the appellant/claimant was working as an agricultural coolie and he has suffered a fracture on the left ankle bone. The Medical Board has given the disability certificate marked as Ex.P7

assessing the disability at 10%. But, there is no evidence on record to show that due to the injury, the appellant has suffered permanent disability and he was not able to discharge his functions as before the accident. However, the Tribunal on considering the same, has awarded a sum of Rs.30,000/- towards partial permanent disability. Hence, there is no reason to interfere with the same. So far as the medical expenses is concerned, the Tribunal has allowed the entire medical expenses as per the medical bills produced by the claimant. For pain and suffering, a sum of Rs.15,000/- has been awarded and so far as nutritious food is concerned, another sum of Rs.10,000/- was awarded and for the transport expenses, the Tribunal has awarded a sum of Rs.5,000/-, which are reasonable. Therefore, there is no reason to interfere with the same.

10. So far as the loss of income is concerned, the Tribunal did not award any amount. From the materials available on record, it could be seen that the appellant has suffered a fracture and he was bedridden for more than six months and at the time of accident, he was an agricultural coolie. Considering all those circumstances, this Court is of the view that the appellant being an agricultural coolie, he would have earned atleast a sum of Rs.8000/- per month and he was bedridden for six months. Hence, he ought to have suffered a loss of income to the tune of Rs.48,000/- (8000 x 6). So far as the attender charges is concerned, the appellant said to have taken treatment for long time, but no amount has been granted towards attender charges. Hence, a sum of Rs.2000/- can be granted towards attender charges. Considering all the above circumstances, the award passed by the Tribunal modified as follows :-

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or enhanced
1	Medical expenses	27,665	27,665	confirmed
2	Pain and suffering	15,000	15,000	confirmed
3	Extra nourishment	10,000	10,000	confirmed
4	Transport to hospital	5,000	5,000	confirmed
5	Partial permanent disability	30,000	30,000	confirmed
6	Loss of income	-	48,000	granted
7	Attender charges	-	2,000	granted
	Total	87,665	1,37,665	enhanced

10. Earlier, the Tribunal had passed an award in favour of the 1st respondent, owner of the vehicle, fixing the liability on him and directed the 2nd respondent to pay the amount and recover the same from the 1st respondent. In the said circumstances, the 2nd respondent is directed to deposit the enhanced compensation amount with interest at the rate of 7.5% from the date of petition till the date of deposit and recover the same from the 1st respondent.

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.87,665/- is hereby enhanced to Rs.1,37,665/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment and recover the same from the 1st respondent. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

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To

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

C.M.A.No.3457 of 2019

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