



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.1569 of 2020

Thunai Murugan,
S/o. Kailasam,
No.185, East Street,
Vellannur, Pudu Naduvalur Post,
Perambalur Taluk,
Perambalur Dt.

... Appellant /Claimant

Vs.

1. Sundharamoorthy,
S/o. Jayaraman,
No.245, South Street,
Selliampalayam,
Perambalur - 621 212.

2. United India Insurance Company Limited,
rep. By its Branch Manager,
No.50-A, Pallivasal Street,
Perambalur - 621 212.

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the Order and decree passed in M.C.O.P. No.314 of 2016, dated 18.10.2019 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Perambalur.

For Appellant : Mr.S.Kamadevan

For Respondents : R1 - exparte
Mr. M.J.Vijayaraghavan
for R2

J U D G M E N T

The claimant, not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Perambalur in MCOP No.314 of 2016, has filed the present Civil Miscellaneous Appeal before this Court seeking enhancement of compensation.



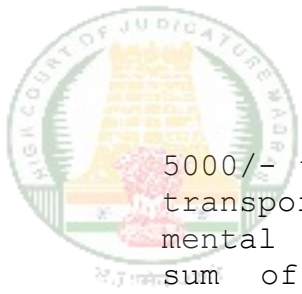
2. The brief facts leading to the filing of this Civil Miscellaneous Appeal is as follows :

On 14.12.2015, at about 09.15 a.m., while the claimant was riding a two wheeler from Perambalur-Chettikulam road, a two wheeler bearing Regn. No. TN-46 R-8607 owned by the 1st respondent, which was insured with the 2nd respondent came in a rash and negligent manner on the opposite direction and dashed against the claimant's two wheeler, in which he has sustained serious injury through out the body and also a fracture in the right leg. He has taken treatment at the Government Hospital, Perambalur from 14.12.2015 to 29.12.2015 and also undergone a surgery. After treatment, he has suffered a permanent disability and he is not able to discharge his duties as before. The claimant is working as a driver and earning a sum of Rs.15,000/- per month. Due to the injuries sustained in the accident, claiming a compensation of Rs.10 lakhs, he has filed the claim petition before the Tribunal.

3. The 1st respondent/owner of the vehicle remained exparte. The second respondent Insurance Company contested the claim petition on the ground that the accident was taken place only due to the rash and negligent driving of the claimant himself and no negligence would be fixed on the insurance company. According to them, the rider of the two wheeler also did not possess driving license at the time of accident. Hence, the insurance company is not liable to pay compensation.

4. Before the tribunal, the Appellant/claimant examined himself as P.W.1 and the Doctor was examined as P.W.2 and marked as many as 10 documents as Ex.P1 to P10. On the side of the respondents, two witnesses were examined and marked as many as 5 documents as Ex.R1 to R5. The disability certificate issued by the medical board was marked as Ex.C1.

5. The Tribunal, after considering both the oral and documentary evidence, has come to a conclusion that the accident was taken place due to the rash and negligent driving of the driver of the offending two wheeler. Since the rider of offending vehicle did not possess the driving license, there is a violation of policy condition. Hence, the liability was fixed on the owner of the vehicle, however, the insurance company was directed to pay the compensation and recover the same from the owner of a two wheeler. In respect of quantum of compensation, the Tribunal has held that the medical board had assessed the disability at 35%, awarded a sum of Rs.3000/- per percentage and arrived a sum of Rs.1,05,000/- towards the disability. In respect of other heads, the Tribunal has awarded a sum of Rs.



5000/- towards pain and sufferings, a sum of Rs.10,000/- towards transportation and nourishing food, a sum of Rs.5000/- towards mental agony, a sum of Rs.6000/- towards loss of income, and a sum of Rs.7500/- towards medical expenses. Totally, the Tribunal has awarded a sum of Rs.1,38,500/- as compensation. Not being satisfied with the same, the claimant is before this Court with this Appeal.

6. I have heard and considered the rival submissions made by learned counsel appearing for appellant as well as 2nd respondent and perused the records.

7. The accident was taken place in the year 2015 and the claimant was working as a Driver. Immediately after the accident, he was taken to the Government Hospital, Perambalur and he was treated as inpatient from 14.12.2015 to 29.12.2015 for 15 days. In the above accident, the appellant has suffered a fracture in the right leg and also undergone some surgery. The claimant has gone to the medical board for assessment of disability and the medical board, after assessing him, come to a conclusion that the appellant has suffered the disability at 35%. Even though the appellant's counsel would submit that the disability suffered by the appellant is a permanent disability, and he is not able to continue his avocation as a driver. Hence, after the accident, there is a loss of future earning capacity, but there is no supporting evidence for the same. However, considering the fact that the appellant has suffered serious injury, undergone surgery and the accident has been taken place in the year 2015, this Court is of the view to grant a sum of Rs.4000/- per percentage of disability, which would suitably fulfills the requirement of claimant. In the said circumstances, towards disability, a sum of Rs.1,40,000/- is granted. So far as pain and sufferings, the claimant was inpatient for 15 days and undergone a surgery. Hence, a sum of Rs.20,000/- is granted towards pain and suffering instead of Rs.5000/- awarded by the tribunal. Regarding loss of income, due to the injury, the appellant said to have bedridden for three months. Hence, the monthly income can be arrived at Rs.9000/-, and he is entitled to get a sum of Rs.27,000/- towards loss of income for three months, instead of Rs.6000/- awarded by the Tribunal. In respect of other heads, the Tribunal has granted a just and fair compensation. Hence, there is no reason to interfere with the same.

8. In view of the above, the compensation awarded by the Tribunal is modified as follows :-



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Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or enhanced
1	Towards pain and sufferings	5,000	25,000	enhanced
2	Transportation and nourishing food	10,000	10,000	confirmed
3	Mental agony	5,000	5,000	confirmed
4	Loss of income	6,000	27,000	enhanced
5	Medical bills	7,500	7500	confirmed
6	Disability	1,05,000	1,40,000	enhanced
	Total	1,38,500	2,14,500 (rounded to 2,15,000)	enhanced

Thus, the appellant is entitled to get a sum of Rs.2,15,000/-, instead of Rs.1,38,500/- awarded by the Tribunal.

9. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,38,500/- is hereby enhanced to Rs.2,15,000/- 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 six weeks from the date of receipt of a copy of this judgment and thereafter, recover the same from the owner of the vehicle viz., 1st respondent in the manner known to law. 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/-

Assistant Registrar

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Sub Assistant Registrar



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To

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Perambalur.

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

+1cc to Mr.S.Kamadeven, Advocate SR.No.41985

C.M.A.No.1569 of 2020

AD(CO)
GN(23/11/2021)