IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.3957 of 2019

R.Praveen Kumar .. Appellant/Petitioner

Vs.

1. P.Sivaperumal

2. M/s.United India Insurance Co. Ltd.,
T.P.Hub, No.140A, Peramanur Main Road,
Salem - 636 007. .. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decree dated 23.10.2018, made in M.C.O.P.No.207 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Salem.

For Appellant	:	Mr.K.Kuppusamy
For Respondent 1	:	Mr.E.P.Seeniyangiri
For Respondent 2	:	Mr.S.Arunkumar

- - - - -

J U D G M E N T

Feeling unsatisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, the appellant/claimant is before this Court with this appeal seeking enhancement of compensation.

2. The brief facts leading to the filing of this appeal is as follows:

(i) On 01.10.2016, at about 9.00 a.m., while the appellant/claimant was riding his two wheeler, a tractor owned by the first respondent, which was insured with the second respondent, while trying to overtake the appellant/claimant two wheeler, dashed against him, in which, he was thrown away and suffered grievous injuries all over his body and he was admitted in a private hospital in Salem and took treatment.

(ii) At the time of the accident, the appellant/claimant was 19 years old and was studying in an engineering college. Due to the accident, he suffered 20% disability, hence, he filed a claim petition before the Tribunal seeking Rs.10,00,000/- as compensation.

3. The first respondent who is the owner of the vehicle remained ex parte. The second respondent insurance company contested the claim petition by stating that the accident had taken place due to the rash and negligent driving of the appellant/claimant and hence the insurance company is not liable to pay compensation. That apart, only the tractor has been insured with the second respondent and the trailer attached with the tractor has not been insured. The tractor has to be used only for agricultural purpose, whereas, at the time of the accident, the owner of the vehicle attached a water tanker to the tractor and used it for commercial purposes, which is a policy violation and therefore, the second respondent/insurance company is not liable to indemnify the first respondent / owner of the tractor. So far as the disability is concerned, the second respondent/insurance company disputes the injuries sustained by the claimant.

4. In order to prove the claim, the appellant/claimant examined himself as P.W.1 and marked as many as nine documents as Exs.P1 to P9. On the side of the respondents two witnesses were examined as R.W.1 and R.W.2 and marked as many as five documents as Ex.R1 to R5. The disability certificate issued by the Medical Board and X-rays were marked as Ex.C1 and C2.

5. The Tribunal after considering the materials available on record came to the conclusion that the accident took place due to the rash and negligent driving of the driver of the tractor. As the tractor was insured with the second respondent and the tanker was not insured, however as per the policy condition the tractor must be used for agricultural purpose, at the time of the accident the water trailer has been attached to the tractor, which is a violation of policy condition, hence the Tribunal held that the second respondent insurance company need not indemnify the first respondent owner of the vehicle. So far as the quantum of compensation is concerned, the Tribunal accepted the disability certificate issued by the Medical Board at 20% and awarded a sum of Rs.60,000/- towards disability. The Tribunal has awarded a sum of Rs.25,000/- towards pain and suffering; Rs.22,500/- towards loss of income; Rs.9,269/- towards medical expenses; Rs.7,000/- towards transport expenses; Rs.10,000/- towards extra nourishment; Rs.10,000/- towards attender charges; Rs.1,750/- towards damage to clothes and Rs.5,000/- towards loss of amenities, thus, totalling a sum of Rs.1,50,519/- was awarded as compensation. Being aggrieved on the compensation awarded by the Tribunal at Rs.1,50,519/-, the appellant/claimant has filed the present appeal seeking enhancement.

6. I have heard the learned counsel on either side and also perused the records carefully.

7. The primordial contention of the learned counsel appearing for the appellant/claimant is that though the Tribunal after considering that the accident had taken place due to the rash and negligent driving of the driver of the tractor and as the tractor has been insured with the second respondent ought to have fixed the liability on the insurance company to pay the compensation. A perusal of the records, it could be seen that only the tractor has been insured with the second respondent, but there is no valid insurance policy for the trailer. It is also found by the Tribunal that the accident had taken place due to the rash and negligent driving of the driver of the tractor. Further, at the time of the accident, the tractor was not used for agricultural purpose but for commercial purpose for transporting water, it is only a violation of policy condition. In such circumstances, even though the insurance company is not liable to indemnify the owner of the vehicle, the insurance company could pay the compensation and recover the same from the owner of the vehicle. The Tribunal without considering the same, failed to order pay and recovery.

8. Considering the above facts and circumstances of the case, this Court is of the view that the second respondent / insurance company is directed to pay the compensation to the appellant/claimant and recover the same from the first respondent / owner of the vehicle.

9. So far as the quantum of compensation is concerned, the Tribunal has accepted the disability certificate issued by the Medical Board as 20% partial permanent disability and awarded a sum of Rs.60,000/-. However, towards loss of income a sum of Rs.22,500/- was awarded by the Tribunal, which was disputed by the learned counsel for the second respondent / insurance company stating that the claimant was a student, there is no evidence to substantiate that there was loss of income to the claimant due to the accident. I find some force in the argument of the learned counsel appearing for the insurance company and therefore the appellant/claimant is not entitled to get any amount under the head loss of income. Further from a perusal of the records, it could be seen that the appellant/claimant was admitted in the hospital for nearly four weeks and had undergone some treatment, hence for pain and suffering instead of Rs.25,000/- a sum of Rs.45,000/- has been granted and towards attender charges only a sum of Rs.10,000/- has been awarded, which is now increased to Rs.22,500/-. So far as other heads are concerned, the Tribunal has rightly granted compensation and there is no reason to interfere with the same.

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

Sl. No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
1.	Pain and Sufferings	25,000	45,000	Enhanced
2.	Loss of income	22,500	-	No amt granted
3.	Medical expenses	9,269	9,269	Confirmed
4.	Transport expenses	7,000	7,000	Confirmed
5.	Extra nourishment	10,000	10,000	Confirmed
6.	Attender Charges	10,000	22,500	Enhanced
7.	Damage to clothing	1,750	1,750	Confirmed
8.	Loss of amenities	5,000	5,000	Confirmed
9.	Disability	60,000	60,000	Confirmed
	Total	1,50,519	1,60,519	Enhanced by Rs.10,000/-

11. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,50,519/- is hereby enhanced to Rs.1,60,519/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The second respondent / insurance company is directed to deposit the entire award amount as 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 to the credit of M.C.O.P.No.207 of 2017, on the file of the Motor Accident Claims Tribunal, Sub Court No.1, Salem and recover the same from the first respondent / owner of the vehicle. On such deposit of the enhanced compensation amount, now determined by this Court, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation now determined by this Court. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

kk

To

1. The Motor Accident Claims Tribunal,
   Special Sub Court No.1,
   Salem.

Copy to:
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.35940

C.M.A.No.3957 of 2019

RP(CO)
CB(25/08/2021)