

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1085 of 2014

A.Mujeeb Ahamed

.. Appellant/Petitioner

Vs.

1.K.Murugan

2.B.Devaraj

3.The Branch Manager,
IFFCO Tokio General Insurance Company Ltd.,
Old No.28, New No.195,
I and II Floor, North Usman Road,
T.NAgar, Chennai 600 017.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Award and decree dated 17.02.2012 made in MCOP No.378 of 2009, on the file of the Motor Accidents Claims Tribunal, Special Judge, Krishnagiri.

For Appellant : Mr.M. Sriram

For R1 : No Appearance

For R2 : No Appearance

For R3 : Mr.E.Rajadurai for Mr.M.B.Raghavan

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of the compensation awarded by the Tribunal in MCOP No.378 of 2009, on the file of the Motor Accidents Claims Tribunal, Special Judge, Krishnagiri.

2. The appellant is the claimant. The first and respondents are the driver and owner of the alleged vehicle involved in the accident. The third respondent is the insurer of the vehicle.

3.The case of the claimant is that on 30.04.2006 at about 16.30 hrs, the petitioner was proceeding in his bike bearing Registration No.TN-24/X-0960 towards Krishnagiri from Rayakottai and one Narayanan was accompanying him as a pillion rider and when they were nearing Addapallam (Rayakottai to

Krishnagiri main road) a tempo bearing Registration No. TN-30-J.0252, came in the opposite direction in a rash and negligent manner and dashed against the bike of the appellant. Due to the impact the appellant sustained injuries. The accident occurred due to the rash and negligent driving of the driver of the tempo. Hence, the appellant filed a claim petition before the Tribunal seeking Rs.5,00,000/- as compensation.

4. During the trial before the Tribunal, in order to prove his case, the claimant examined himself as P.W.1 and the Doctor who issued disability certificate was examined as P.W.2. and marked eight documents viz., Ex.P1 to Ex.P8. On the side of the respondent, no witness was examined and no documents were marked.

5. The Tribunal, considering the pleadings, oral and documentary evidence, awarded a sum of Rs.67,500/- to the claimant. Aggrieved by the award passed by the Tribunal, the appellant/claimant has filed this appeal before this Court.

6. The learned counsel for the claimant/appellant submitted that due to the accident, the appellant was not able to sit, stand or walk as before. Therefore, he is not able to work as before and lost his earning capacity and the amount awarded under the head partial loss of income is very low, when compared to the avocation and earning power of the appellant. The learned counsel further submitted that the Tribunal ought to have adopted multiplier method to arrive income under the head loss of income and also prays to enhance the award amount.

7. The learned counsel appearing for the third respondent/Insurance company submitted that the driver of the tempo as well as the rider of the two wheeler does not possess valid driving licence at the time of accident. He would further contend that the averments in the claim petition is totally false. In any event, the award of the Tribunal is on higher side.

8. On a perusal of impugned award, it reveals that the appellant, in order to substantiate his claim examined himself as P.W.1 and marked Ex.P.1/F.I.R. With regard to the contention raised by the third respondent/Insurance Company that the driver of the offending tempo does not possess valid driving license at the time of accident, the petitioner has issued legal notice to the driver and owner of the tempo to produce the driving license and the same was marked as Ex.P.3. On the other hand the Insurance Company has not taken steps to discharge their burden i.e to prove that the driver of the offending vehicle does not possess valid driving licence. The petitioner had made out a prima-facie that the tempo is validly covered under the 3rd respondent's policy and Ex.P.1/F.I.R also supports the case of

the claimant. As such sufficient ingredients required to indemnify the Insurance Company is found. Hence, the Tribunal fastened the liability on the part of the Insurance Company, which is perfectly valid in the eye of law and this Court does not inclined to interfere with the said findings and the same are confirmed as such, with regard to negligence aspect.

9. With regard to quantum of compensation arrived by the Tribunal , there was no documentary proof regarding the avocation of the injured. Hence, the Tribunal fixed the notional income of the injured as Rs.4,500/- and due to the injuries he was unable to attend the work for 3 months, considering the same the Tribunal quantified Rs.13,500/-(Rs.4,500x3) as partial loss of income. Taking note of Ex.P.2/Wound certificate and the nature of injuries sustained by the appellant Rs.2,000/- each was awarded towards Nutritious charges and attendant charges. Considering Ex.P.8/Disability certificate Rs.20,000/- each was awarded towards Temporary Temporary disability and pain and sufferings. Apart from this Rs.10,000/- was awarded towards loss of amenities. Thus, the total compensation was quantified to Rs. 67,500/-.

10. In view of the above, the Tribunal has awarded only Rs.20,000/- towards Temporary disability, stating that the inconveniences referred by the Doctor to the appellant are infact not disabilities but only discomforts, therefore this Court is inclined to interfere into the said findings and modify all the heads including the head temporary disability. With regard to partial loss of income, considering the nature of injuries, he was unable to go for work atleast for 6 months and the monthly income of the appellant was taken as Rs.5,000/- and Rs.30,000/- (Rs.5,000x6) is being awarded towards Loss of income. The Doctor/Dr.Devendiran assessed the disability of the appellant as 25% and this Court is inclined to take 20% as disability and Rs.2,000/- per percentage is taken and quantify Rs.40,000/- towards the head Disability. Considering other relevant materials all the other heads are modified. Thus, the amount awarded by this Court is as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1	Temporary disability	Rs.20,000/-	Rs.40,000
2	Partial loss of income	Rs.13,500/-	Rs.30,000/-
3	Nutritious Food	Rs.2,000/-	Rs.5,000/-
4	Transportation	-Nil-	Rs.5,000/-

5	Attender expenses	RS.2,000/-	Rs.5,000/-
6	Pain and suffering	Rs.20,000/-	Rs.20,000/-
7	Loss of amenities	Rs.10,000/-	Rs.15,000/-
	Total	Rs.67,500/-	Rs.1,20,000/-

11. Thus, the award amount is enhanced from Rs.67,500/- to Rs.1,20,000/- and the order of the Tribunal in MCOP No.378 of 2009, on the file of the Motor Accidents Claims Tribunal, Special Judge, Krishnagiri, dated 17.02.2012 is hereby set aside.

12. In the result, this Civil Miscellaneous Appeal is partly allowed. The 3rd respondent/Insurance Company is directed to deposit the amount awarded by this Court with interest at 7.5% p.a from the date of petition till the date of realization, less the amount already deposited if any, within a period of 8 weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimant is permitted to withdraw the award amount on making proper application before the Tribunal. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

smn
To

1.The Motor Accidents Tribunal,
Special Judge, Krishnagiri.

2.The Section Officer,
V.R Section,
High Court, Madras.

+1 CC to Mr.Mukund R. Pandian, Advocate sr 5802.

+1 CC to Mr.M.B.Gopalan, Advocate sr 6897

C.M.A.No.1085 of 2014

AK(CO)
SP(19/08/2020)