

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2020

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.705 of 2014

Sakthivel

... Appellant/Claimant

Vs.

1. The Managing Director,
TNSTC, Chennai.

2. Palaniyandi Mudhaliar

3. The Branch Manager,
United India Insurance Co. Ltd.,
No.46, Katpadi Road, Vellore. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MACTOP.No.651 of 2004 dated 22.06.2010 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tiruvannamalai.

For Appellant : Mrs.Subadra
for M/s.M.Malar.

For Respondents : Mr.K.J.Sivakumar for R1.
R2 No appearance.
Mr.M.J.Vijayaraghavan, for R3.

J U D G M E N T

The appellant is the claimant filed this appeal for enhancement of compensation, as against the judgment and decree made in MACTOP.No.651 of 2004 dated 22.06.2010 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tiruvannamalai.

2. On 18.03.2000 at about 9.00pm the appellant was travelling in the second respondent tractor bearing Reg.No.TCF 6381 as coolie, the tractor was insured with the third respondent/insurance company. At that time, the first respondent bus bearing Reg.No.TN01-N-6399 driven by its driver in a rash and negligent manner dashed against the second

respondent tractor, thereby the appellant and others sustained grievous injuries/ Thereafter, the appellant was admitted in the Government Hospital, Villupuram and shifted to private hospital.

3. The second respondent/owner of the tractor filed counter stating there is no negligence on the part of the driver of the tractor. Due to the rash and negligent driving of the first respondent/bus driver the alleged accident was occurred. The negligence is attributed against the first respondent bus, therefore, the first respondent alone is liable to pay the compensation and the second respondent is not liable to pay any compensation to the claimant.

4. The third respondent/insurance company filed counter inter alia stating that the claimant was travelling as a coolie in the tractor and trailer belonging to the second respondent on Chennai to Vikravandi Road near Adaikalapuram village, the Government bus belonging to first respondent came in opposite direction driven by its driver in a rash and negligent manner dashed against the tractor. The FIR also named the driver of the Bus as the accused. Hence, the third respondent/insurance company is not liable to pay the compensation.

5. In order to prove the case of the claimant, the father of the claimant was examined as PW1 and PW2 and marked Ex.P1 to Ex.P5. No oral and documentary evidence has been marked on the side of the respondents.

6. Heard the rival submissions made on both sides and perused the materials available on record.

7. The learned counsel for the appellant submits that the appellant was aged about 20 years at the time of accident, he was working as a supplier and earning a sum of Rs.1,500/-p.m and now was not able to work as like earlier, his shoulder has been dislocated. PW2 Doctor also deposed that dislocation in right hand and he cannot move his hand freely and cannot hold anything with the help of his right hand, the Doctor also assessed the disability at 30% The Tribunal failed to consider the other aspects and failed to award more compensation on other heads. The claimant is under continuous medication as advised by the Doctor and the Tribunal failed to consider this aspect.

8. The learned counsel for the first respondent submits that the Tribunal has rightly considered the entire facts and the nature of injuries sustained by the claimant and awarded fair compensation which is on higher side.

9. From the available records, it is seen that the tribunal

has rightly considered the case of the claimant and awarded fair compensation. There is no evidence to show that the claimant was working as supplier at the time of accident and earning a sum of Rs.1,500/-p.m. and out of the injuries and dislocation in his hand, the claimant was not able to lift anything in his right hand. The Tribunal failed to consider for awarding compensation under the heads of transportation, permanent disability, damages to and loss of income.

10. This Court however considering the material factors relevant for determination of just and fair compensation is inclined to enhance the compensation as stated below, the enhanced compensation on the heads of pain and sufferings, permanent disability and nutritions & attendant charges are as follows :-

Sl.No.	Heads	Amount
1	Pain and sufferings	10,000
2	Future medical expenses	10,000
3	Transportation	3,000
4	Extra nourishment	5,000
5	Attendant charges	3,000
6	Permanent disability	20,000
7	Damages to cloths	1,000
8	Loss of income	6,000
	Total	58,000

11. The compensation of Rs.30,000/- is enhanced to Rs.58,000/-. The same is payable with interest at 7.5% per annum from the date of petition till the date of payment and with proportionate cost. The time for payment of amount is eight weeks from the date of receipt of copy of the Judgment and on such deposit of amount, the claimant is permitted to withdraw the entire amount by filing separate cheque application. The judgment of the trial Court remains unaltered in other respects.

12. In the result, the Civil Miscellaneous appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

tsh

To

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Tiruvannamalai.

Copy To

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

+1cc to Mr.M.Malar, Advocate, S.R.No. 5154
+1cc to Mr.M.J.Vijayaraghavan, Advocate, S.R.No.5053
+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No. 5436

C.M.A.No.705 of 2014

GP (CO)
GN (29/01/2021)



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