

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.718 of 2014

P.Logu

... Appellant/ Claimant

Vs.

1. K.Tamilarasan

2. C.Ammasai

3. IFFCO - Tokio General Insurance Co Ltd.,

Having office at Tulasi Chambers

3rd Floor, 195, T.V.Swamy Road (W)

R.S.Puram, Coimbatore - 641 002.

... Respondents/ Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.248 of 2010 dated 31.01.2013 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Erode.

For Appellant : Mrs.Sasi
for Mr.M.Guruprasad.

For Respondents : R1 & R2 - Exparte.
Mr.J.Michealvisuvasam for R3.

J U D G M E N T

This appeal has been filed by the appellant for enhancement of compensation against the judgment and decree made in MCOP.No.248 of 2010 dated 31.01.2013 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Erode.

2. The case of the claimant before the Tribunal is as follows :-

On 27.03.2010 at about 4.30pm the claimant was riding motor cycle bearing Reg.No.TN33 AL 2034 at the left extreme on the Erode to Bhavani Road, south to north direction proceeding to B.P.Agraharam for his business purposes. While nearing Kamadhenu Kalyana Mandapam, a TVS star city motorcycle bearing Reg.No.TN33 AJ 7285 came in the same direction in a rash and negligent manner hit the claimant. The claimant was thrown off and sustained injuries over head with nose bleeding and injuries all over the body. The claimant was taken to Senthil Multi Speciality Hospital, Erode and thereafter shifted to KG.Hospital, Coimbatore. The Karungalpalayam police registered

a case against the first respondent for the offences under Section 279 & 337 of IPC in Cr.No.341 of 2010. At the time of accident , the claimant was aged about 39years and doing lorry transport business and also doing Quarrying rough stone and gravel and selling of sand, thereby earning a sum of Rs.25,000/- p.m.

3. The third respondent/insurance company states that the second respondent was the owner of the vehicle TN33-AJ-7285 and the transfer of ownership was not duly intimated to the insurance company, as per the terms and conditions of the policy, the insurance company is not liable to pay compensation. The injuries are being exaggerated for filing the claim petition. The accident took place only on account of the negligence of the claimant and the insurance company is not liable to pay the compensation.

4. In order to prove the case of the claimant, the claimant examined PW1 to PW3 and marked Ex.P1 to Ex.P18. No oral and documentary evidence has been marked on the side of the respondents.

5. Heard both sides and perused the materials available on record.

6. The learned counsel for the appellant/claimant submits that due to the injuries the appellant was treated at KG Hospital for the period from 27.03.2010 to 14.04.2010 and again from 28.05.2010 to 08.06.2010. During that time, the surgery has been undergone for removing the skull of the claimant and again artificial bone has been fixed on the right side head. Due to the accident, the claimant was not able to do his regular work often he feel giddiness, headache, loosing his memory and he cannot able to concentrate in his routine work. PW3 Doctor who treated and assessed the disability states that the claimant was suffering from the above ailments and therefore fixed the 22% for calculating the disability. The Tribunal has not considered the business carried on by the claimant in calculating the loss of income, the claimant was doing lorry transport and doing quarry business on agreement with the Government, the District Collector has also signed agreement with the claimant for a period of five years from 06.03.2008 to 05.03.2013, this aspect has been omitted by the Tribunal in calculating the loss of income and prays for enhancement.

7. The learned counsel for the third respondent/insurance company submits that the Tribunal has gone into all the aspects and considered the nature of the injuries sustained by the claimant and awarded fair compensation which is on higher side.

8. From the available records, it is seen that the Tribunal has rightly assessed and fixed the disability at 22%. After the period of accident the claimant underwent Ex.P16/CT Scan brain test, the scan report and discharge summary found that "Craniotomy defect - Right front - Temporo parietal region, Encephalomalacic changes - Right temporo parietal region, Old Longitudinal fracture - Right Mastoids and fluid in right mastoid aircells." Ex.P15/discharge summary shows that the claimant is suffering from Infarction - means an area of necrosis resulting from a sudden insufficiency of arterial or venous blood supply, to stuff. Encephalomalacia which means abnormal softness of the cerebral parenchyma often due to ischemia or infraction. Ex.P10 is the tender agreement between the claimant and the District Collector, Erode for a period of five years from 06.03.2008 to 05.03.2013 for the purpose of quarrying rough stone and gravel in S.No.162/2. With regard to loss of income, if the claimant was not met with the accident he ought to have earned more than the amount fixed by the Tribunal, on seeing the medical records, the claimant is under medication for nearly two years due to the head injuries sustained due to the accident. Hence, it is a fair claim of the claimant to consider the loss of income for a period of one year by fixing the monthly income at Rs.15,000/- by considering the nature of business and source of income earned by the claimant. The Court below erroneously not considered the agreement produced by the claimant, which clearly shows that the District Collector granted lease to quarry, rough stone and gravel.

9. 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 are as follows :-

Sl.No.	Heads	Amount
1	Transportation	15,000
2	Pain and sufferings	50,000
3	Nutrition	15,000
4	Medical expenses	4,08,798
5	Loss of income	1,80,000
6	Disability	44,000
7	Future medical expenses	10,000
	Total	7,22,798

10. The compensation of Rs.5,20,798/- is enhanced to Rs.7,22,798/- and rounded off to Rs.7,23,000/-. 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.

11. In the result, the civil miscellaneous appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

tsh

To

1. The Motor Accident Claims Tribunal,
Principal Subordinate Judge, Erode.

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

1 cc to M/s. M. Guruprasad, Advocate SR. 5590

1 cc to M/s.J. Michal Viswasam, Advocate, Sr. 5076

C.M.A.No.718 of 2014

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