



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.3761 of 2019
and
CMP.No.11787 of 2020

Ramaya ... Appellant/Claimant
Vs.

1.Sri Ambal Agencies
No.3/136, North Veethi
A.Valavanthi Main Road
Namakkal Taluk & District.

2.Oriental Insurance Company Ltd.,
KVA Complex,
No.90-A, Thuraiyur Main Road
Namakkal Town & District.

... Respondents/Respondents

[1st Respondent is already set exparte
before the Tribunal, hence notice may
be dispensed with in this appeal]

PRAYER:- Civil Miscellaneous Appeal preferred under
Section 173 of Motor Vehicles Act, 1988, for enhancement of
compensation in the judgment and decree in MCOP.No.122 of
2017 dated 06.10.2018, on the file of the MACT/Chief
Judicial Magistrate Court at Namakkal.

For Appellant : Mr.M.Lokesh

For Respondents : R1 - Exparte
Ms.R.Sreevidhya [R2]



J U D G M E N T

Not feeling satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Namakkal in MCOP No.122 of 2017, dated 06.10.2018, the claimant has filed this appeal seeking for enhancement of compensation.

2. The brief facts leading to file the appeal is as follows:

On 17.02.2015, at about 1.45 p.m., while the appellant/claimant was riding a two wheeler viz., TVS Sport bearing Registration No. TN 28 AL 7536 in Thuraiyur-Namakkal Main Road, a Mahindra Maximo Auto owned by the first respondent, which was insured with the second respondent Insurance company, came in the opposite direction in a rash and negligent manner and dashed against the claimant vehicle, in which, he sustained serious injuries. Immediately, he was taken to one Akshaya Hospital at Namakkal, where he has undergone surgery and the injuries suffered by the claimant are as follows:-

1. RTA with displayed fracture in coracoids and Acromia process of left shoulder join with soft tissue hematoma with left upper limb weakness.
2. Comminuted fractures in spine and body of scapula.
3. Left chest contusion with pneumothorax.
4. Right 2nd metatarsal fracture.
5. Post traumatic multiple raw areas over right arm, right thigh, right lateral leg. Medial leg, left forearm, right dorsum of foot.

3. The grievance of the petitioner is that at the time of accident, he was working as a daily labour in a private company and after the accident, due to the disability suffered by him, he was not able to discharge his duties as before. Hence, he filed a claim petition claiming a sum of Rs.25 lakhs as compensation.

4. The first respondent, owner of the vehicle remained exparte and the second respondent/Insurance Company disputed the claim petition on the ground that the accident has taken place due to the negligent driving of the appellant/claimant. That



apart, the driver of the first respondent's did not possess a licence to drive the vehicle. Hence, it is a violation of policy condition, and the Insurance Company is not liable to pay the compensation. That apart, the second respondent also questioned the monthly income of the appellant.

5. In order to prove his case, on the side of the claimant, two witnesses were examined and as many as 16 documents were marked. On the side of the respondents, one witness was examined and 3 documents were marked.

6. The Tribunal, after considering the materials available on record, came to the conclusion that the accident has taken place due to the rash and negligent act of the driver of the offending vehicle, and at the time of accident, the driver of the first respondent vehicle did not possess a valid licence to drive the heavy vehicle and hence, there is a violation of policy condition, and fixed the liability on the owner of the two wheeler, however, the insurance Company was directed to pay the amount and recover the same from the owner of the two wheeler. So far as the quantum of compensation is concerned, the monthly income of the claimant is fixed as Rs.4,000/- and he suffered 40% disability, the Tribunal awarded the compensation as follows:-

Sl.No.	Headings	Amount Awarded by the Tribunal Rs.
1	Loss of income	8000
2	Transportation expenses	2,000
3	Nutritional expenses	25,000
4	Medical Bills	4,06,480
5	Permanent disability 40% x 3000	1,20,000
	Total	6,36,480

Aggrieved over the same, the present Civil Miscellaneous Appeal has been filed.



WEB COURT

7. The learned counsel for the appellant would submit that in the accident the claimant had a fracture in the spinal cord and suffered 40% disability and he was admitted in the hospital for more than 72 days. That apart, he has also suffered another fracture of tibia below the knee in both his legs and that he could not continue his work as a labour and he is suffering 40% permanent disability. The Tribunal without applying the multiplier method, simply awarded a sum of Rs.1,20,000/- towards disability. So far as the other heads are concerned, the Tribunal has also not awarded adequate compensation and hence, the appellant is before this Court seeking for enhancement of the award amount.

8. Per contra, the learned counsel appearing for the Insurance Company would submit that even though the appellant is stated to have suffered 40% disability, it is not a permanent disability and he suffered a partial disability. However, the Tribunal based on the Medical Certificate issued by the Doctor, awarded a sum of Rs.1,20,000/- towards disability and no need for any inference, according to him, the compensation awarded by the Tribunal need not be inferred.

9. I have considered the rival submissions and perused the materials available on records carefully.

10. It is an admitted fact that at the time of accident, the claimant was working as a daily wager in a private company and as per the finding of the Tribunal, the accident has taken place due to the negligent driving of the first respondent's vehicle, in which the claimant sustained serious injuries as stated above, including fracture in the spinal cord and he had undergone surgery. According to the evidence of P.W.2, Doctor, a plastic surgery was also done to the claimant, and after accident, that he is not able to do his duty and he was confined in his house, still he is having pain, he is not able to stand or walk continuously; and he cannot lift things and he is totally depending upon other persons to do his daily work, that evidence was not challenged before the Tribunal. The Doctor has also given opinion that he had suffered 40% permanent disability and the Tribunal also accepted the same. However, the Tribunal after accepting the permanent disability of 40% without applying the multiplier method, simply awarded a sum of Rs.1,20,000/- towards loss of earning. From the evidence available, it is



seen that due to the injuries suffered in the accident, he could not continue his avocation. At the time of accident, the age of the claimant was 32 years old and due to the injuries suffered and surgeries undergone, he was confined in his house, and now totally depending upon other persons for his day to day activities and this has affected his earning capacity. Hence, this Court is of the view that it is a fit case, where multiplier method can be applied, as per the judgment of the Hon'ble Supreme Court reported in 2011(1) SCC 343 in the case of Rajkumar /vs/ Ajaykumar and another.

11. Considering the age of the claimant, applying the multiplier of 16 and after adding 40% for future prospects, (4000x12x16x40%),, the loss of income comes to Rs.3,07,200/- So far as the other heads, it is stated that the claimant has undergone several surgeries and was admitted as in-patient in the hospital for 72 days. Hence, a sum of Rs.1 lakh can be awarded to the claimant towards pain and sufferings; and towards attendant charges he is entitled to Rs.25,000/-; and for loss of amenities he is entitled to Rs.25000. Towards Transportation, the claimant is entitled to Rs.15,000/-. Since, he was confined at his home without job for nearly 6 months, the loss of income is fixed as Rs.24,000/-. However, the sum of Rs.4,06,480/- fixed by the Tribunal towards the medical bill is confirmed. Hence, the award amount is now enhanced to Rs.9,27,680/- instead of Rs.6,36,480/- as awarded by the Tribunal.

12. Considering all the above circumstances, the award passed by the Tribunal is modified as follows :-

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or enhanced
1	Loss of income	8000	24,000	enhanced
2	Transportation expenses	2000	15000	enhanced
3	Extra Nourishment	25,000	25,000	confirmed



WEB COPY

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or enhanced
4	Medical Bills	4,06,480	4,06,480	confirmed
5	Permanent disability	1,20,000	--	--
6	Pain and sufferings	75000	1,00,000	enhanced
7	Attendant charges	--	25,000	enhanced
8	Loss of earning capacity	--	3,07,200	enhanced
9	Loss of amenities	--	25,000	enhanced
	Total	6,36,480	9,27,680	enhanced

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,36,480/- is hereby enhanced to Rs.9,27,680/- together with interest at the rate of 7.5% per annum from the date of claim 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 eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

// True Copy //

Sub Assistant Registrar

mrp



To:

The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court
Namakkal.

Copy to

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

+1CC to M/s.R.Sreevidhya, Advocate, SR.No. 35734

+1CC to M/s.Ma.P.Thangavel, Advocate, SR.No. 35262

C.M.A.No.3761 of 2019

LN(CO)

B.VC (01/09/2021)