



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 05.11.2020

CORAM :

THE HONOURABLE MR.JUSTICE **K.KALYANASUNDARAM**

C.M.A(MD) No.89 of 2007

C.Sahayaraj

...Appellant

Vs.

1.B.N.Moorthy

2.M/s.United India Insurance
Company Limited, Vellore.

3.M/s.Krishna Bus Service,
C-69, 10th Cross, Thillai Nagar,
Trichy - 18.

4.M/s.Oriental Insurance Company,
Limited, 73/B-1, Salai Road,
Tiruchy - 18.

...Respondents

PRAYER: This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 20th October, 2004 and made in MCOP. No.30/2001 on the file of the Motor Accidents Claims Tribunal (3rd Addl. Subordinate Judge), Trichirapalli.

For Appellant : Mr.M.P.Senthil

For Respondents : No appearance for R1 and R3
Mr.J.S.Murali for R2
Mr.C.Ramachandran for R4

ORDER

Being dissatisfied with the Award passed by the Motor Accidents Claims Tribunal(3rd Addl. Subordinate Judge), Trichirapall in M.CO.P.No.30/2001, the claimant has preferred this appeal seeking enhancement of compensation.

2.The facts in brief:

It is the case of the claimant that on 27.06.2006, when he was travelling in the bus belonging to the third respondent bearing Registration No.TN-48-M-3623 from Trichy to Perambalur as a passenger, a Lorry bearing Registration No.TN-23-B-8737 driven by its driver in a rash and negligent manner, which was coming from the opposite direction dashed against the bus. The claimant would further state that due to the impact, the right portion of the bus was totally damaged, thereby the claimant sustained grievous injuries and also fracture. So, he was immediately taken to the Government Hospital, Trichy where he took treatment as inpatient



till 30.06.2000. Thereafter, he was admitted in Madhuras Hospital from 30.06.2000 and he was discharged only on 02.09.2000.

3.The claimant further stated that while taking treatment a skin crafting was done and he also underwent surgery for the fracture of the right shoulder. In regard to occupation it is stated that he is an agriculturist and an Assistant Operator with Kannan agencies at Perambalur by which he earned Rs.5,000/- per month.

4. The second respondent and fourth respondent, both the Insurance Companies filed their counter disputing the averments made in the claim petition and it is stated that the claim was high and excessive. According to the respondents, the accident did not take place as projected by the claimant.

5. During the trial, on the side of the claimant three witnesses were examined and 6 documents were marked. On the side of the respondents, though no witness was examined, Ext.R.1 was produced.

6. The Tribunal, upon consideration of the oral documentary evidence, came to the conclusion that the the driver of the first respondent Lorry was responsible for the accident and awarded compensation of Rs.1,63,000/- together with interest at 9% per annum. Challenging the same, the present appeal has been filed.

7. Mr.Venugopal, learned counsel for the appellant would urge that the claimant has suffered 75% disability and it was proved through Ext.A.5 and P.W.3. But, the Tribunal has awarded meager compensation of Rs.75,000/- towards permanent disability. It is also contended that the Award on the other heads are also very low and they required to be enhanced.

8. Per contra, Mr.J.S.Murali, learned counsel appearing for the second respondent would argue that the Tribunal, on proper appreciation of the evidence produced by the claimant, awarded a reasonable compensation and the appellant has not made out any ground for enhancement of the Award amount.

9. In the instant case, the Tribunal had come to the conclusion that the driver of the lorry was responsible for the accident and the said finding of the Tribunal is not under challenge and it reached finality as no appeal was preferred assailing the same. On the other hand, this appeal has been filed by the claimant seeking enhancement of compensation. When the claimant was examined as P.W.1 he deposed that in the accident he sustained grievous injuries and fractures on the right hand, particularly on the right shoulder. From his evidence, it is seen that though he initially took treatment at Government Hospital, Trichy for 3 days and thereafter, he was treated in a private hospital from 30.06.2002 to 02.09.2002.



In order to prove the above said contention Ext.A.2, discharge summary card was produced. P.W.3, Doctor, who examined the claimant assessed the disability at 75%. Ext.P.5, is the disability certificate. Since the second respondent insisted for assessment of disability by the Medical Board, the claimant was referred to Medical Board, Trichy where they assessed the disability at 50%, which is marked as Ex.R.1.

10. It is to be noted that the evidence of P.W.1, P.W.3 and Ex.A.2 and Ext.A.5 would show that claimant sustained fractures and multiple injuries for which he took treatment as inpatient for more than three months in a Government Hospital as well as in a private hospital. Ext.A.3 and A.4 are the medical bills and the salary certificate respectively. Taking note of the fact that the claimant suffered the disability at the age of 30 years, this Court is of the opinion that the Award amount passed by the Tribunal needs to be enhanced. Accordingly, the amounts are enhanced as follows:

Sl. No.	Heads	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Permanent Disability	75,000.00	1,00,000.00
2.	Pain and suffering	15,000.00	50,000.00
3.	Medical Expenses	71,000.00	75,000.00
4.	Diet and nourishment	2,000.00	-
4.	Transportation	-	5,000.00
5.	Attendant Charges	-	20,000.00
6.	Loss of amenities	-	30,000.00
7.	Loss Expectation in life	-	20,000.00
	Total	1,63,000.00	3,00,000.00

11. Accordingly, the Judgment and Award which is under challenge in this appeal is modified. The enhanced compensation will carry interest at 6% p.a. The second respondent Insurance Company shall pay the modified Award amount along with interest as stated above less already deposited within a period of 8 weeks. On such compliance, the claimant is permitted to withdraw the same.

Sd/-

Assistant Registrar(CS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To,

The III Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Trichirapalli.

COPY TO

The V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.M.P. SENTHIL, Advocate (SR-21346[F] dated 06/11/2020)

+1 CC to M/s.J.S.MURALI, Advocate (SR-21436[F] dated 06/11/2020)

C.M.A(MD) No.89 of 2007
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PM(CO)

TR(08.12.2020) 4P 6C