



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 14.12.2020

DATE ON WHICH PRONOUNCED : 21.12.2020

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

C.M.A(MD) No.722 of 2010

WEB COPY

M.K.Bhuhari

... Appellant/Petitioner

vs.

1. Proprietor,
Velavan Roadlines,
Rose Buildings, 2nd Floor,
86A/30, East Car Street,
Tuticorin.

2. The Assistant Executive Engineer,
Vadakku Pachayar Reservoir,
(Sub Division) P.W.D,
Cheranmahadevi - 627 414.

3. Executive Engineer, W.R.O,
(P.W.D) Vadakku Pachayar Reservoir,
Project Division,
Valliyoor - 627 117.

4. The Oriental Insurance Co.Ltd.,
Tuticorin.

... Respondents / Respondents

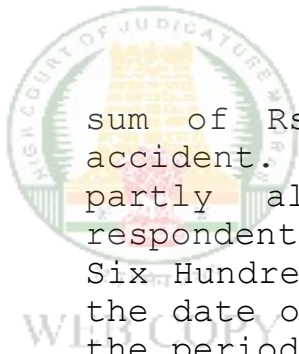
Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree passed by the learned Motor Accident Claims Tribunal (2nd Additional Subordinate Judge) Tirunelveli in M.C.O.P.No.401 of 1999, dated 11.09.2001.

For Appellant	: Mr.S.Kumar
For R4	: Mr.K.Bhaskaran
For R2	: No Appearance
For R1 & R3	: Dismissed

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the order/award passed by the Motor Accident Claims Tribunal (2nd Additional Subordinate Judge) Tirunelveli in M.C.O.P.No.401 of 1999, dated 11.09.2001.

2. The appellant herein has filed a claim petition in M.C.O.P.No.401 of 1999 on the file of the Motor Accident Claims Tribunal (2nd Additional Subordinate Judge) Tirunelveli, under Section 166, 140 & 163 A of the Motor Vehicles Act, claiming a



sum of Rs.1,50,000/- for the injuries sustained in a Motor accident. The Tribunal, by the order/award dated 11.09.2001, has partly allowed the said claim petition and directed the respondents to pay a sum of Rs.6,600/- (Rupees Six Thousand and Six Hundred Only) with interest at the rate of 9 % per annum from the date of filing of petition till the date of deposit (excluding the period of default of petition, if any). Feeling aggrieved, the appellant has filed the present Civil Miscellaneous Appeal for enhancing the award amount.

3. The case of the claimant before the Tribunal:-

On 05.01.1999, at about 12.45 p.m, the petitioner was riding his cycle near Ambasamudram to Melapalayam Main Road. At that time, vehicle belongs to the respondents 2 and 3 was driven by its driver in a rash and negligent manner and dashed against the petitioner. As a result of which, he sustained multiple injuries. He was admitted in the Government Medical College Hospital, Tirunelveli.

(ii) With regard to the aforesaid accident, a complaint was lodged before the Melapalayam Police Station, and based on the same, a First Information Report has been registered in Crime No.8/1999 for the offences under Sections 279 and 338 IPC against the drivers of both vehicles.

(iii) At the time of accident the injured was hale and healthy and he was aged about 35 years and he was doing clothe business and he is the only bread winner of his family. Due to the said accident, the petitioner is not able to go any job and he is not able to attend his regular activities and hence, the petitioner claimed Rs.1,50,000/- as compensation.

4. The respondents 1 & 3 remains *ex-parte* before the Tribunal.

5. The case of the third respondent is that the manner of the accident is disputed. Only the lorry bearing Registration No.TTU 7567 was driven by its driver in a rash and negligent manner and dashed against the petitioner. So the respondent 2 & 3 have no way responsible for the occurrence.

6. The fourth respondent filed a counter and stating that the accident took place only due to the rash and negligent driving on the part of the respondents 2 and 3s' vehicle driver. So, the first respondent is not responsible for the accident.

7. In the enquiry, on the side of the petitioner / appellant, he was examined as P.W.1 and 7 documents marked. On the side of the respondents one witness was examined and no document marked.



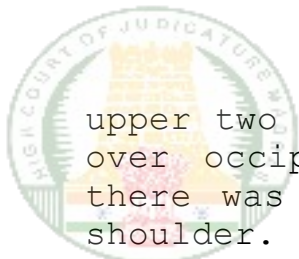
8. At the conclusion of enquiry, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of both the vehicles' drivers and awarded a sum of Rs.6,600/- (Rupees Six Thousand and Six Hundred Only) as compensation. The learned Tribunal has also directed the respondents to pay interest for the aforesaid amount at the rate of 9% per annum from the date of filing of petition till the date of deposit and also directed the respondents to pay the costs to the petitioner.

9. The appellant / petitioner has preferred this Civil Miscellaneous Appeal challenging the quantum passed by the Tribunal.

10. Since this is the claimant appeal, the liability fixed by the Tribunal was not challenged by the respondents by filing counter objection. So, the findings rendered by the Tribunal with regard to the negligent aspects has to be confirmed. Regarding the compensation, the Tribunal has found that as per Ex.P.5 / wound certificate, 5 injuries are noted and among them, 3rd and 5th injuries were found to be grievous in nature and other injuries were simple. Except, Ex.P.5 / wound certificate, the petitioner did not produce any documentary or oral evidence regarding the disability suffered by him. It has also been noted that with regard to the disfigurement of face, no document was produced. The petitioner has not also established the disability suffered by him because of the accidental injuries.

11. Now, according to the appellant, the assessment made by the Tribunal is not correct. Since the appellant is a self-employed person and earning a sum of Rs.3,500/- per month, he was unable to attend his work for a period of three months from the date of accident. Further, the treatment charges were not also taken into account by the Tribunal. So, he prayed this Court that in the light of these points, the evidence on record, must be considered.

12. The petitioner, during the course of evidence deposed that, he suffered head injury and because of that, there was a bleeding through nose and ear. Apart from that for the injuries on the left leg and right palm region, he was taking treatment as inpatient for a period of 17 days in the Government Hospital, Tirunelveli. Because of the injuries in the head region, there was disfigurement of face. He has also produced the photographs of his face before and after the accident, which were marked as Exs.P.8 and Ex.P.9. In Ex.P.5, the copy of the Accident Register, three injuries are noted. The first injury is bleeding from the left ear, the second injury is a lacerated wound of 6 cm x 3 cm bone depth over left occipital region of scalp and the third injury is



upper two incisors missing and fourth injury is a depressed injury over occipital scalp region. In the X-Ray, it was found that, there was no bont injury, on the skull region and on the right shoulder. No fracture was noticed on the right foot region. There was fracture on the great toe and second toe. The injuries namely, the loss of upper two incisors and fracture on the right foot region were found to be grievous. So, only two injuries were found to be grievous in nature. So, the contention that he was in the Government Hospital for 17 days, there was disfigurement of face because of the head injury, are not acceptable. The comparison of face before and after occurrence also does not show any disfigurement in the face. A slight change may occur due to the loss of two upper incisors. So, from this alone, no conclusion can be reached that because of the injury in the head region, there was disfigurement. Further, no expert was examined, on the side of the petitioner, to prove the same. So, there is no evidence to show that his earning capacity was reduced. Hence, the appellant cannot argue that the assessment made by the Tribunal is on the lesser side.

13. Hence, this Court is of the considered view that the accident took place in the year of 1999 and the compensation of Rs.6,600/- awarded by the Tribunal appears to be reasonable. The Tribunal has not awarded any compensation for the loss of upper two incisors. If at all, the appellant is entitled for compensation only for the loss of two upper incisors, for the loss of one tooth Rs.5,000/- was used to be awarded and so for the loss of two tooth Rs.10,000/- to be awarded. Thus, a sum of Rs.10,000/- has to be added to the total compensation awarded by the Tribunal.

14. In the result the Civil Miscellaneous Appeal is allowed and the award passed by the Tribunal is enhanced from Rs.6,600/- (Rupees Six Thousand and Six Hundred only) to Rs.16,600/- (Rupees Sixteen Thousand and Six Hundred Only). There is no order as to costs. The respondents are directed to pay the enhanced compensation within a period of two months from the date of receipt of a copy of this order with interest at the rate of 7.5% per annum from the date of filing of petition till the date of deposit and on such deposit, appellant / petitioner is permitted to withdraw the same.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



dss

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The II Additional Subordinate Judge,
The Motor Accident Claims Tribunal
(2nd Additional Subordinate Court),
Tirunelveli.

Copy To

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to Mr.K.Bhaskaran, Advocate SR.No. 26559

JUDGMENT MADE IN
C.M.A(MD) No.722 of 2010
21.12.2020

DKS(CO)
TR(25.02.2021) 5P 5C