



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA No.675 of 2020

Kathiravan

... Appellant/Petitioner

Vs

1.Zaheer Ussain

2.M/s. United India Insurance Company Ltd.,
Christo Building, Bank Road,
Ooty - 643 001,
Nilgiris District.

... Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in MCOP.No.806 of 2017, dated 26.09.2019, on the file of Motor Accident Claims Tribunal, (Special District Judge), Dharmapuri.

For Appellant : Mr.S.Sathiaseelan

For Respondents : Ms.Harini
for Mr.M.B.Gopalan Associates

J U D G M E N T

The injured claimant, who was favoured with the compensation of Rs.5,71,200/- for the multiple injuries suffered by him in an accident that occurred on 18.12.2016, is on appeal terming the said compensation as inadequate.

2.According to the claimant, the accident occurred while he was on the way to Sabarimala, when he got down from the bus for lunch the Car bearing Registration No.TN11-Z-9085 belonging to the first respondent driven by its driver in a rash and negligent manner knocked him down and the petitioner sustained multiple injuries.



3. There was a fracture in the left tibia, left ankle apart from injury in the spinal cord. He was admitted as inpatient for almost 14 days and two surgeries were performed. Claiming that the injuries caused, affected his earning power and the disability is permanent in nature, the claimant sought for a sum of Rs.41,00,000/- as compensation.

4. The Insurance Company resisted the claim contending that the driver of the offending vehicle was not negligent and it was the claimant who was negligent. FIR was registered on the basis of the complaint lodged by the friends of the claimant, who had travelled with him. The Insurance Company also disputed the age, avocation and the income of the claimant. The compensation claimed was termed as excessive. Before the Tribunal, the claimant was examined as PW1 and Exhibits P1 to P24 were marked. The disability certificate issued by the medical board was marked as Ex.X1. The Tribunal on a consideration of the evidence on record concluded that the accident was caused due to the negligence of the driver of the Car bearing Registration No.TN11-Z-9085.

5. On the said finding, the Tribunal fastened the liability upon the Insurance Company. On the quantum, the Tribunal took into account the disability certificate issued by the medical board, which fixed the disability at 20%.

6. Taking into account, the various documents filed by the petitioner to prove his avocation as a driver as well as a construction contractor, the Tribunal took his monthly income at Rs.8,000/-, applied multiplier of 16 and arrived at the compensation for the disability, namely 20%, at Rs.3,07,200/-. The Tribunal awarded conventional damages under various heads as follows:

Heads	Amount Rs.
Pain and suffering	Rs.25,000/-
Extra nourishment expenses	Rs.20,000/-
Attender charges	Rs.10,000/-
Transport charges	Rs.25,000/-
Loss of amenities	Rs.30,000/-
Medical expenses	Rs.1,54,000/-

7. Thus the Tribunal fixed the total award at Rs.5,71,200/-. Terming the same as inadequate the claimant has



come up with this appeal.

8.I heard Mr.Sathiaseelan, learned counsel appearing for the claimant/appellant and Ms.Harini, learned counsel appearing for the second respondent Insurance Company.

9.Mr.Sathiaseelan, learned counsel appearing for the claimant would contend that the Tribunal was not right in fixing the monthly income at Rs.8,000/-, which is too low. He would also contend that disability should have been fixed at higher rate considering the avocation of the appellant. He would further point out that the compensation awarded towards pain and suffering is too low and no amount has been awarded towards future medical expenses.

10.Contending contra, Ms.Harini, learned counsel appearing for the Insurance Company would submit that the claimant has no consistent case regarding his avocation. In the claim petition, it is stated that he is a building contractor. Before the medical board, he has said that he is a labourer. He has also produced documents to show that he had a driving licence and he is owning a heavy vehicle. Therefore, according to the learned counsel for the Insurance Company, the Tribunal was justified in fixing the monthly income at Rs.8,000/-. She would also contend that the conventional damages awarded are also reasonable.

11.I have considered the rival submissions.

12.Considering the documents produced and the nature of the avocation of the claimant, I am of the opinion that the fixation of Rs.8,000/- per month as his income is far too low. Admittedly, the claimant possesses a licence for driving heavy vehicle. Ex.P12 certificate has been produced to show that he has been engaging in other work namely, construction contract also. Therefore, on a pragmatic assessment, I am of the opinion that the monthly income could be taken as Rs.15,000/-. If the monthly income is taken as Rs.15,000/-, the compensation for permanent disability would be Rs.5,76,000/-. The Tribunal has awarded Rs.25,000/- for pain and suffering.

13.Considering the period of hospitalization namely, 14 days, the compensation awarded appears to be low. The same is enhanced to Rs.70,000/- i.e., Rs.5,000/- per day. The compensation awarded on the other heads is confirmed. A sum of Rs.10,000/- is awarded towards future medical expenses, considering the fact that there were some implants.



14.The total compensation is enhanced and rounded of to Rs.9,00,000/- with interest at 7.5%. The Insurance Company is directed to deposit the enhanced compensation with 7.5% interest to the credit of the MCOP.No.806 of 2017 on the file of the Motor Accident Claims Tribunal, the Special District Judge, Dharmapuri, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant/appellant is permitted to withdraw the entire amount deposited. No costs.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

vs

To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Dharmapuri.

Copy to:

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

+1cc to Mr.S.Sathiaseelan, Advocate SR.No.65213

CMA No.675 of 2020

SVI (CO)
CB(06/01/2022)