



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No.1005 of 2013

Amarnath

... Appellant/Claimant

Versus

1. Manobalan

2. United India Insurance Company Limited,
Rep by its Branch Manager,
2, Church Street,
Karaikal.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 06.02.2012 made in M.A.C.T.O.P.No.82 of 2011 on the file of the Motor Accident Claims Tribunal, District Court, Karaikal.

For Appellant : Mr.S.sounthar

For Respondents

R1 : Not ready in notice
For R2 : Mr.S.Arunkumar

J U D G M E N T

This appeal is laid as against the judgment and decree dated 06.02.2012 made in M.A.C.T.O.P.No.82 of 2011 on the file of the Motor Accident Claims Tribunal, District Court, Karaikal, thereby awarded the compensation to the tune of Rs.2,42,000/-

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimant is that on 17.03.2011, when he was travelling in the bike driven by the first respondent as a pillion rider, the first respondent suddenly applied brake as such, the claimant fell down and sustained injury on his head, right humerus and right femur. The claimant is a vegetable



WEB COPY

vendor at Nehur Market, Karaikal, and he is earning a sum of Rs.500/- per day. Due to the injuries sustained by him, he could not continue his avocation, since his disability assessed at 85%. Therefore, the claimant filed claim petition seeking compensation at Rs.3,00,000/-.

4. Resisting the same, the second respondent filed counter stating that the accident took place only because of the rider of the motor cycle. When an unknown person suddenly crossed the road, the rider of the motor cycle applied sudden brake as a result of which, the claimant fell down and sustained injuries. Therefore, the second respondent is not at all liable to pay any compensation and sought for dismissal of the claim petition.

5. On the side of the claimant, examined P.W.1 & P.W.2 and marked Ex.P.1 to Ex.P.10. On the side of the respondents neither oral nor documentary evidence was let in. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal awarded a sum of Rs.92,000/- as compensation payable by the respondents. Being not satisfied with the quantum of the compensation awarded by the Tribunal, the claimant came forward with the present appeal.

6. The learned counsel appearing for the appellant/claimant submits that the claimant is being the vegetables vendor, he could not continue his avocation, since he sustained fracture on his right humerus and right femur. His disability was assessed by P.W.2 at 85%, whereas the Tribunal has taken only 60% that too without applying multiplier method. The Tribunal has failed to award any compensation under the heads of transportation charges, attender charges. The claimant was earning a sum of Rs.500/- per day and he was not able to do his avocation for the past six months. Even then, the Tribunal awarded a sum of Rs.2,000/- towards loss of income for two months. Therefore, he prayed for enhancement of the award amount.

7. Per contra, the learned counsel appearing for the second respondent contended that the disability of the claimant is only a temporary wound and it would not lead any discontinuation of avocation. If the claimant subjected for medical examination, it would come to light that he is fully fit for doing avocation as such, the Tribunal rightly awarded the compensation by giving Rs.1,000/- per percentage for disability. He further submitted that the Tribunal rightly awarded a sum of Rs.2,000/- under the head of loss of income for two months and a sum of Rs.5,000/- for extra nourishment. Therefore he prayed for dismissal of the present appeal.



8. Heard Mr.S.Sounthar, learned counsel appearing for the appellant/claimant and Mr.S.Arunkumar, learned counsel appearing for the second respondent.

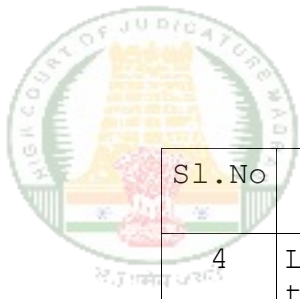
9. The claimant and the first respondent were travelling in motor cycle on 17.03.2011. The first respondent had suddenly applied brake and due to which the claimant fell down from the vehicle and sustained head injury, fracture in right humerus and right femur. He was admitted in General Hospital, Karaikal on 17.03.2011 and thereafter he was shifted and admitted in Jipmer Hospital, Puducherry and he was as inpatient till 28.03.20211. The claimant sustained grievous injuries as he has suffered multiple fractures at right humerus and right femur. He was taking treatment as inpatient for more than 11 days.

10. The Doctor who assessed the disability, was examined as P.W.2. The disability certificate is marked as Ex.P.9 and it revealed that the claimant had sustained 85% disability. There is no evidence to show that because of the disability he could not continue his avocation as vegetables vendor. Further there is no proof to show that the claimant is earning a sum of Rs.500/- per day as vegetables vendor. However, he sustained fracture at his right humerus and right femur. Therefore, the Tribunal has awarded a sum of Rs.1,000/- per percentage towards permanent disability. This Court is inclined to award a sum of Rs.2,000/- per percentage under the head of permanent disability.

11. Insofar as the other heads, the Tribunal has awarded a sum of Rs.2,000/- towards loss of income for two months and Rs.5,000/- towards extra nourishment and a sum of Rs.25,000/- for pain and suffering. This Court is inclined to grant a sum of Rs.4,000/- towards loss of income and confirmed the amount awarded in other heads. The Tribunal failed to award any compensation towards transportation charges and attender charges. Therefore, this Court is inclined to award a sum of Rs.5000/- each towards transportation charges and attender charges.

12. Accordingly the compensation awarded by the Tribunal stands modified as under :-

Sl.No	Heads	Awarded by the Tribunal	Awarded by this Court
1	Permanent disability	60,000	1,20,000
2	Pain and suffering	25,000	25,000
3	Extra nourishment	5,000	5,000



Sl.No	Heads	Awarded by the Tribunal	Awarded by this Court
4	Loss of income for two months	2,000	4,000
5	Transportation charges	Nil	5,000
6	Attender charges	Nil	5,000
	Total	92,000	1,64,000

13. In the result the Civil Miscellaneous Appeal is partly allowed as follows:-

(i) The award passed by the Tribunal is enhanced from Rs.92,000/- to Rs.1,64,000/-.

(ii) The award amount will carry the interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

(iii) The second respondent is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of copy of this Judgment.

(iv) On such deposit, the claimant is permitted to withdraw the amount awarded by filing proper application before the Tribunal.

(v) The claimant shall pay requisite Court fee before the receipt of the copy of the judgment for the enhanced compensation.

(vi) There shall be no order as to costs.

Sd/-

Assistant Registrar(CJ CONF)

//True Copy//

Sub Assistant Registrar

rts

To

1. The District Judge,
Motor Accident Claims Tribunal,
Karaikal.



2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

WEB COPY

+1CC to Mr.S.Sounthar, Advocate, Sr.No.23937
+1CC to Mr.S.Arunkumar, Advocate, Sr.No.23741

C.M.A.No.1005 of 2013

CNR (CO)
K.RK. (28.10.2021)