IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 06.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.1930 of 2010

V.Saravanan ... Appellant

Vs.

1. G. Mohankumar
2. Lakshmi
3. The Bajaj Alliance General Insurance Co. Ltd.
   K.M.a. Complex, 12-G, Ram Nagar,
   Bypass Road, Madurai 625 010. ... Respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation amount and also fix the joint liability on the respondents in the judgment and decree dated 16.11.2009 made in MCOP No.260 of 2007 on the file of the Motor Accident claims Tribunal, II Additional Subordinate Court, Erode by allowing this civil miscellaneous appeal.

For Appellant : Mr.Suganthan

For Respondents : Mrs.R.Sreevidhya for R3

R1 and R2 exparte

J U D G M E N T

Challenging the judgment and decree passed by the Tribunal awarding a compensation of Rs.1,26,400/- for permanent disability with interest at 7.5% p.a. from the date of claim petition till the date of deposit, the claimant/appellant is before this court.

2. The claimant/appellant filed a claim petition before the above said Tribunal seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 21.01.2007.

3. The brief case of the claimant is as follows. On 21.01.2007 at about 2.20 p.m., the claimant was travelling as a pillion rider in a Yamaha Crux motor cycle bearing registration

No.TN.47-P-7709 belonging to one Madhan Kumar, who drove the motor cycle from Vellur to Tiruchengode road and while nearing Mankaradu Valaivu, the driver had driven the motorcycle rashly and negligently and fell down in the left side ditch, as a result of which, the claimant sustained grievous injuries on his head and all over his body and he was admitted to Government Hospital, Tiruchengode and thereafter referred to Government Hospital, Erode. The further case of the claimant is that during the accident the above said Madankumar was unconscious and he was taken to Coimbatore Government Hospital, where he died despite treatment. According to the claimant, the rash and negligent driving of the driver is the cause to the accident and since the vehicle was insured with the third respondent and the first and second respondents being the owners of the vehicle, all the respondents are jointly and severally liable to pay compensation of Rs.5,00,000/- with interest to the claimant.

4. In the trial court, the first and second respondent remained absent and were set exparte and the Insurance company/third respondent resisted the claim petition by filing a counter affidavit.

5. Before Tribunal, on the side of the claimant/appellant, the claimant examined himself and four others as PW1 to PW5 and marked Ex.P1 to Ex.P23. On the side of the third respondent one witness was examined as RW1 and marked Ex.R1.

6. After analysing the evidence on record, the Tribunal has awarded a compensation of Rs.1,26,400/- under the following heads.

Heads	Amount in Rs.
Pain and sufferings	86,400
Pain and sufferings	20,000
Extra nourishment	2,000
Loss of income	3,000
Medical expenses	15,000
Total	1,26,400

7. Heard the learned counsels for the parties and also I have perused the material on record.

8. The contention of the claimant is that he sustained fracture of left Temporal bone on his left side head, cut of optic nerve on left side, fracture of left clavicle and left shoulder bone, fracture of left side ribs, contusion on left side fore head, fracture of left frontal bone and also he lost

his vision totally on his left eye and partly on his right eye. For the above said fractures and injuries he had taken treatment in the hospital and obtained disability certificates and based on that he filed MCOP No.260 of 2007 before the Tribunal.

9. The learned counsel appearing for the claimant / appellant submitted that before Tribunal, the claimant was examined as PW1 and the doctors were examined as PW2 to PW5 and the PW2, PW3 and PW5 have given disability certificates Ex.P18, Ex.P21 and Ex.P23 respectively and the total percentage of permanent disability suffered by the claimant is 75%, however, this aspect was not considered by the Tribunal and awarded compensation only by taking 20% as "Permanent Disability" . He further submitted that considering the above disability certificates and the age of the claimant, the Tribunal ought to have fixed the permanent disability of the claimant as 75% and by adopting multiplier '12' ought to have awarded a sum of Rs.4,59,000/- towards permanent disability. He further submitted that the Tribunal has awarded a very meagre amounts under the other heads also and awarded only a sum of Rs.1,26,400/- as compensation and hence he prayed for enhancement of the compensation.

10. The next contention of the learned counsel appearing for the appellant is that the Tribunal has fixed the liability on the first and second respondent to pay the compensation, but, ought to have fixed the liability on the insurance company/ third respondent, since the vehicle was insured with them. Therefore, he prayed to enhance the compensation and also fix the liability on the insurance company to pay the compensation.

11. The learned counsel appearing for the third respondent/ insurance company admitted that on the date of accident the claimant was a pillion rider of the motorcycle and he sustained grievous injuries due to the accident and the vehicle was insured with them. She further submitted that though the vehicle was insured, additional premium for the pillion rider was not paid on the policy and the policy is only an " Act Policy" and it does not have coverage for the occupant. Her contention is that by following the decision rendered by the Honourable Supreme Court in Oriental Insurance Company Ltd. Vs. Suthakaran reported in 200(6) MLJ 149 (SC), the Tribunal had rightly come to a conclusion that the insurance company is not liable to pay compensation and hence, she prayed for dismissal of the appeal against the insurance company.

12. Now, the points for determination before this court is

(i) Whether the insurance company/third

respondent is liable to pay compensation to the claimant?

(ii) Whether the compensation awarded by the Tribunal has to be enhanced.

13. Point No.1

Admittedly on the date of accident, the claimant was a pillion rider and the owner of the vehicle had insured the vehicle with the insurance company. However, the owner has not taken the policy for the third party also by paying the additional premium and the policy taken by the owner is only an " Act Policy " and no coverage for the occupant, as per the terms and conditions of the policy. This issue was already decided by the Honourable Supreme Court and hence, the Tribunal has rightly fixed the liability on the owners.

14. Point No.2

The learned counsel appearing for the appellant/claimant submitted that though the Doctors PW2, PW3 and PW5 have given disability certificates Ex.A18, Ex.A21 and Ex.A23 which proved that the permanent disability suffered by the claimant is 75%, the Tribunal has committed an error by fixing only 20% as "permanent disability". With regard to this contention, the Tribunal has specifically discussed in paragraph No.19 of its judgment that though the claimant claimed 75% of permanent disability for the injuries sustained by him in the accident, to prove his contention, he has not examined the doctors, who have given treatment to him. Therefore, by taking note of the evidence given by PW2, PW3 and PW5 and also Ex.A18, Ex.A21 and Ex.A23 has correctly fixed the permanent disability at 20% and awarded a sum of Rs.86,400/- and hence, there is no reason to interfere with the findings recorded by the Tribunal. In so far as the other heading " Pain and Sufferings" is concerned, the Tribunal has awarded a sum of Rs.20,000/-. However, considering the grievous injuries sustained by the claimant and also considering the disability certificates issued by the doctors, this court is of the view that it would be appropriate to award a sum of Rs.30,000/- towards " Pain and Sufferings". As far as the other heads viz. " Extra Nourishment, Medical expenses, Loss of income " are concerned, the Tribunal has elaborately discussed and awarded a just compensation and the same do not warrant any interference by this court. Accordingly the revised compensation awarded under various heads is hereunder.

Heads	Compensation awarded by the Tribunal	Compensation modified by this court
Pain and sufferings	86,400	86,400
Pain and sufferings	20,000	30,000
Extra nourishment	2,000	2,000
Loss of income	3,000	3,000
Medical expenses	15,000	15,000
Total	1,26,400	1,36,400

15. In the result,

(i) The appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from 1,26,400/- to Rs.1,36,400/-

(ii) The first and second respondents/owner of the vehicle are directed to deposit the enhanced compensation of Rs.1,36,400/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of 12 weeks from the date of receipt of a copy of this order, less the amount if already deposited.

(iii) On such deposit being made by the first and second respondents the claimant is entitled to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

mst

To

1. Motor Accident claims Tribunal,
   II Additional Subordinate Court, Erode.

+1cc to M/s.R.Sree Vidhya, Advocate, S.R.No.965
+1cc to Mr.N.Manokaran, Advocate, S.R.No.665

CMA.1930 of 2010

VSN II(CO)
CB(14/09/2021)