



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.12.2020

PRONOUNCED ON: 05.01.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.367 of 2009

(Through Video Conferencing)

Rajagopal ... Appellant/Petitioner

vs.

1.D.Saravanan

2.M/s.The New India Assurance Co., Ltd.,
163, Madhanagopalapuram,
Perambalur.

(1st Respondent was set exparte
before the Lower Court)

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.12.2008 made in M.C.O.P.No.293/2007 on the file of Motor Accident Claims Tribunal (Principal District Court), Perambalur.

For appellant : M/s.Sangamithrai

For 2nd respondent : M/s.A.Salomi for
Mr.C.Rameshbabu

For R1 : Exparte

J U D G M E N T

The appellant was the claimant. He is aggrieved by the impugned Judgment and Decree dated 02.12.2008 passed by the Motor Accident Claims Tribunal, Principal District Court, Perambalur in M.C.O.P.No.293 of 2007.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.40,000/- as compensation together interest at 7.5% from the date of claim petition till the date of realisation and cost, to the appellant/claimant for the injury suffered by him.



3. The Tribunal has awarded under the following heads:

Permanent disability	Rs.25,000
Pain and suffering	Rs. 5,000
Transport Expenses	Rs. 5,000
Loss of income	Rs. 5,000
Total	Rs.40,000

4. This appeal has been filed for enhancement of the compensation awarded by the Tribunal on account of the injury suffered by him in the accident that occurred on 11.01.2007.

5. The accident is said to have taken place when the appellant/claimant was travelling in a share auto bearing registration No.TN 46 E 2287, belonging to the 1st respondent insured with the 2nd respondent allegedly driven by the 1st respondent in a rash and negligent manner when the insured share-auto in a rash and negligent manner and capsized, as a result of which, the appellant sustained injuries.

6. The appellant/claimant therefore, filed a claim petition. After considering the evidence on record and considering the nature of injury suffered by the appellant/claimant, the Tribunal has awarded an amount of compensation as Rs.40,000/- to the appellant. In this appeal, the appellant seeks for enhancement of compensation.

7. It is submitted that the nature of injury suffered by the appellant was grievous in nature resulting in permanent disability. The appellant was working as a lorry driver at LPG 40' bulk tanker lorry. The income of the claimant was Rs.6,000/- p.m. in the claim petition. The accident took place on 11.01.2007 the appellant was admitted as inpatient at Government Hospital, Perambalur between 11.01.2007 to 22.07.2007.

8. The case of the appellant is that a part from treatment as inpatient in Perambalur Medical College/Hospital, he also took outside treatment and Mr.viz., Arivazhagan who deposed evidence as P.W.2 stated that the appellant had 25% disability as he suffered the following injuries.

- i) Fracture of left leg
- ii) Grievous injuries in his right leg, right forehead and right hand .



9. The learned counsel for the 2nd respondent Insurance Company submits that the impugned Judgment and decree was well reasoned and requires no interference.

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10. I have considered the arguments advanced by the learned counsel for the appellant and the learned counsel for the 2nd respondent Insurance Company. I have also perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

11. Ex.P.9- Disability Certificate and examined as P.W.2 who deposed that the appellant had 25% disability.

12. There is no permanent disability due to the injury suffered by the appellant. At the same time, the appellant has suffered fracture of leg and other grievous injury. The Tribunal has awarded only a sum of Rs.25,000/- towards injuries suffered under the head of permanent disability. Since the appellant has sustained injuries are grievous in nature, a sum of Rs.25,000/- awarded towards injuries deserves to be enhanced.

13. The amount awarded towards pain and suffering is also low and same is partially enhanced by another sum of Rs.5,000/-. The Tribunal has awarded a sum of Rs.5,000/- towards loss of income considering the nature of injury resulting in fracture. Considering the nature of injury suffered by the appellant, the amount awarded towards pain and suffering appears to be low. It is enhanced to Rs.10,000/-. It would be suffice to assume that the appellant would have been out of action for six months. The appellant has claimed that he was working as a driver and was earning a sum of Rs.6,000/- p.m. The accident is of the year 2007. Therefore, I accept the case of the appellant that he would have been earning a sum of Rs.6,000/- as monthly income. As per the decision of the Hon'ble Supreme Court in Syed Sadiq Vs. United India Insurance Co.Ltd., (2014) 2 SCC 735, the notional income of a vegetable vendor was considered as Rs.6,500/- per month. Therefore, the amount awarded towards loss of income is enhanced to Rs.36,000 (Rs.6,000 x 6) from Rs.5,000/-.

14. The Tribunal has not awarded any amounts to the appellant under the other conventional heads such as extra nourishment. A sum of Rs.10,000/- is awarded towards extra nourishment.



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15. Consequently, I am inclined to enhance the compensation awarded under the various heads as follows:

Permanent disability	Rs.50,000
Pain and suffering	Rs.10,000
Transport Expenses	Rs. 5,000
Loss of income	Rs.36,000
Extra nourishment	Rs.10,000
Total	Rs.1,11,000

16. Accordingly, this civil miscellaneous Appeal is partly allowed. The amount of Rs.40,000/- awarded by the Tribunal is hereby enhanced to Rs.1,11,000/- together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of such deposit. The 2nd respondent-Insurance Company is therefore directed to deposit the enhanced award amount of compensation of Rs.1,11,000/- now determined by this Court along with interest and costs awarded by the Tribunal, less any amount already deposited by it, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the same with interest and costs, less any amount already withdrawn, by filing suitable application before the Tribunal. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kkd
To

The Motor Accidents Claims Tribunal,
(Principal District Court),
Perambalur.

+1cc to M/s.C.Vidhusan, Advocate Sr.318
+1cc to Mr.C.Ramesh Babu, Advocate Sr.281

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kj[co]
srg 25/08/2021