



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment
21.01.2021

Date of Pronouncing Judgment
26.04.2021

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1841 of 2015

M. Palanisamy

.. Appellant/Petitioner

Vs.

1. J.K. Roopan

2. M/s. HDFC ERGO General Insurance
Company Limited,
4th floor, Rajanarayanan Towers,
70 Race Course Road, Coimbatore - 18.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation awarded in the judgment and decree dated 02.12.2014 made in MCOP.No.364 of 2009 on the file of MACT/Chief Judicial Magistrate Court at Namakkal, with interest and cost by allowing this civil miscellaneous appeal.

For Appellant : Mr. Ma. P. Thangavel

For Respondents : Mr. J. Michael Visuvaram, for R2
R1 - No Appearance

J U D G M E N T

The award dated 02.12.2014 passed in M.C.O.P.No.364 of 2009, is under challenge in the present civil miscellaneous appeal. The claimant is the appellant and the appeal is filed seeking enhancement of compensation.

2. The brief facts leading to the filing of the appeal are as follows:

(i) The appellant while travelling as a pillion rider, on 14.02.2009 in a Hero Honda Splendor Bike bearing Registration



No.TN-30-Q-1165 met with an accident and sustained injuries. As a result of an accident caused by a Tat Indica Car bearing Registration No.TN-38-AB-8553 owned by the first respondent and insured with the second respondent. The appellant preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.364 of 2009 seeking compensation of Rs.7,00,000/-.

(ii) The Motor Accident Claims Tribunal, by its Award dated 02.12.2014 in M.C.O.P.No.364 of 2009 directed the respondents to pay jointly and severally the appellant a sum of Rs.2,89,731/- together with interest at the rate of 7.5%, per annum from the date of claim till the date of realisation.

3. Aggrieved by the quantum of compensation awarded by the Tribunal, the appeal has been filed by the claimant seeking enhancement of compensation.

4. Heard the learned counsel for the appellant and the learned counsel for the second respondent.

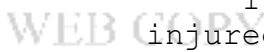
5. The factum of the accident and the manner of the accident and negligence on the part of the driver of the first respondent which was insured with the second respondent / HDFC ERGO General Insurance Company Limited are not in dispute and hence, the finding rendered in this regard by the Motor Accident Claims Tribunal are hereby confirmed.

6. Before the Tribunal, the Insurance Company has taken a plea that the car was not insured with the second respondent-Insurance Company at the material point of time. However, the records reveal the fact that RW1 was examined and he had taken a different stand that the policy was canceled, as the cheque was dishonored. However, they have not filed any communication to that effect.

7. In the absence of any positive evidence indicating repudiation of Insurance policy cover being communicated to the owner and also taking note of the fact that on the date of the accident, the driver of the offending vehicle did not possess necessary valid badge endorsement. The Tribunal, after following the settled proposition of law, has ordered for pay and recovery on the part of the Insurance Company.

8. In the absence of any challenge to such order of pay and recovery on the part of the Insurance Company and no argument being advanced on that point, I find no material to contra finding as to the above fact. Accordingly, the pay and recovery as ordered by the Tribunal is hereby confirmed.

9. On the point of quantum of compensation, heard the rival parties. The claim petitioner being the injured has filed



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14. In view of the injuries sustained by the claim petitioner and the treatment taken by him as an inpatient, attendant charges is fixed at Rs.30,000/-, since he has undergone surgeries for three times. Pain and sufferings is fixed at Rs.40,000/-, Transportation is fixed at Rs.25,000/-, loss of amenities-25,000/-, Nutrition and extra nourishment is fixed at Rs.20,000/- and he could not have suffered partial loss of income for a period of six months at the rate of Rs.6,500/- ($6,500 \times 6 = 39,000$). 2000/- per percentage of disability and $60,000 \times 2,000 = 1,20,000$ /-.

15. Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,89,731/- to Rs.5,24,731/- the details of which read as follows:

Sl. No.	Heads	Tribunal Award	High Court	MODIFIED/ CONFIRMED
1	Partial loss of earning (Rs.3,000x3)	Rs.9,000/-	Rs.39,000/- (6,500x6)	Modified
2	Medical Expenses	Rs.2,25,731/-	Rs.2,25,731/-	Confirmed
3	Pain & Sufferings	Rs.5,000/-	Rs.40,000/-	Modified
4	Partial Permanent Disability (25xRs.2,000)	Rs.50,000/-	Rs.1,20,000/- (60,000x2,000)	Modified
5	Attendant Charges	Nil	Rs.30,000/-	Awarded
6	Transportation	Nil	Rs.25,000/-	Awarded
7	Loss of Amenities	Nil	Rs.25,000/-	Awarded
8	Nutrition and Extra Nourishment	Nil	Rs.20,000/-	Awarded
	Total	Rs.2,89,731/-	Rs.5,24,731/-	

16. Accordingly, the modified compensation of Rs.5,24,731/- is to be paid to the appellant along with the interest from the date of accident. The second respondent / HDFC ERGO General Insurance Company Limited, is directed to deposit the modified award amount of Rs.5,24,731/- along with the interest, within a period of eight weeks, from the date of receipt of copy of the judgment and on such deposit, the appellant-claimant is permitted to withdraw the entire award amount by filing an appropriate application and the payments are to be made through RTGS. Thus, the award dated 02.12.2014,



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passed in M.C.O.P.No.364/2009, stands modified and
C.M.A.No.1841/2015 stands allowed in part. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AT

To:

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court,
Namakkal.

Copy to:

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

+1cc to Mr.S.Michael Visuvasam, Advocate, S.R.No.25369

Pre-delivery Order in
C.M.A.No.1841 of 2015

RSI (CO)
SU(28/10/2021)