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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNA KUMAR

C.M.A.NO.1944 OF 2012

Parthasarathy

...Appellant / Claimant

..Vs..

1.K.A.Abdul Hadhi & Bros.
(A partnership firm rep. by
Managing Partner K.A. Abdul Hadhi),
Dolath Beedi Mfrs.,
17, Fort Street,
Tirupattur,
Vellore District.

2.Oriental Insurance Company Ltd.,
Branch Office,
12, Katpadi Road,
Gudiyatham-632 602,
Vellore District.

...2nd Respondent / 2nd Respondent

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and award passed by the learned Additional Sub Judge, (MACT), Krishnagiri in M.C.O.P.No.289 of 2009 dated 06.01.2012.

For Appellant : Mr.P.Mani

For Respondent-1 : No Appearance

For Respondent-2 : Mr.N.Sampath

J U D G M E N T

Being aggrieved by the award passed by the Motor Accident Claims Tribunal / learned Additional Sub Judge, (MACT), Krishnagiri in M.C.O.P.No.289 of 2009 dated 06.01.2012, the appellant/claimant has preferred the present appeal.

2. Heard Mr.P.Mani, learned counsel appearing on behalf of the appellant and Mr.N.Sampath, learned counsel for the second respondent/Insurance Company. In spite of the notice served on the first respondent, none appears on his behalf. Hence, the appeal is taken up today for final disposal.



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3. The brief facts of the case are as follows:

a) On 15.07.2006 at about 2.00 p.m., when the claimant/appellant was riding in his motor cycle bearing registration No.TN-29-H-9241 along with two others, the first respondent vehicle viz., Tempo Van bearing registration No.TN-23-W-5032 insured with the second respondent herein came in the opposite direction in a rash and negligent manner, dashed against the motor cycle causing grievous injuries to the appellant as well as the pillion rider. Hence, the claimant/appellant had filed a claim petition before the Tribunal claiming a sum of Rs.10 lakhs as compensation for the injuries sustained by him in the accident.

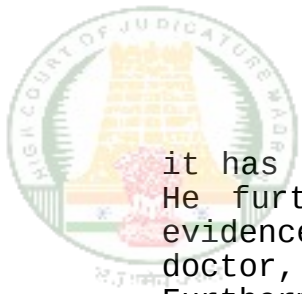
b) Before the Tribunal, witnesses P.W.1 to P.W.3 were examined and exhibits P1 to P11 were marked on the side of the claimants whereas R.W.1 was examined and exhibits R1 to R3 were marked on the side of the respondent Insurance Company. After analyzing both oral and documentary evidences, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the first respondent's vehicle. Since the name of the driver of the Tempo Van was not found in the petition and he did not also have a proper and valid driving license at the time of the accident, the second respondent Insurance Company is absolved from the liability. However, the Tribunal has directed the Insurance Company to pay and recover the compensation amount of Rs.42,000/- with interest at the rate of 9% p.a. awarded to the claimant/appellant herein from the owner of the vehicle/first respondent herein.

c) The break-up details of the award passed by the Tribunal is as follows:

S. No.	Heads	Amounts (Rs.)
1	Temporary disability	20,000
2	Nutritious food	1,000
3	Attendant benefits	1,000
4	Pain and sufferings	10,000
5	Loss of amenities	10,000
	Total	42,000

4. Aggrieved over the same, the claimant/appellant has preferred the present appeal for enhancement of compensation.

5. The learned counsel for the appellant submitted that the Tribunal had erred in taking the percentage of disability assessed by the doctor P.W.3 / Dr.S.Krishnakumar wholly and only



it has taken 10% disability to arrive at the loss of disability. He further submitted that taking into account 40% disability evidenced through Ex.P9/disability certificate assessed by the doctor, the amount has to be granted under the said head. Furthermore, he submitted that the expenses incurred towards medical bills had been denied by the Tribunal though supported by medical bills marked as Ex.P5 and vehemently contended that the Tribunal ought to have awarded the amount incurred towards medical expenses by the appellant as he underwent plastic surgery. He also submitted that the amount awarded by the Tribunal under the other heads needs enhancement.

6. On the other hand, the learned counsel for the Insurance Company submitted that the Tribunal accepting their contentions in respect of violation of policy had rightly absolved their liability but however, directed the Insurance Company to pay the compensation amount and recover the same from the owner of the vehicle. The learned counsel also contended that P.W.3 was not the doctor who treated the appellant for the injuries sustained in the accident. He also contended that the appellant had not served any notice on the driver of the Tempo Van which amounts to breach of policy conditions. He submitted that since there is a violation of policy conditions, the Insurance company has to be exonerated from paying the compensation to the claimant as directed by the Tribunal and pleaded before this Court to direct the first respondent/owner of the vehicle to pay the compensation amount.

7. On perusal of the records, it is seen that P.W.3 Dr.S.Krishnakumar had assessed the disability at 40% based on the medical records under Ex.P9 and hence this Court opines that the Tribunal had wrongly taken the disability at 10%, without getting an expert opinion from the medical board as against the assessment of P.W.3, who has assessed the disability at 40%. Hence, on fixing the disability at 40% as assessed by P.W.3, a sum of Rs.80,000/- (Rs.2000/- per percentage of disability) has been arrived for the disability sustained by the claimant/appellant at the accident that took place on 15.07.2006. This Court taking into consideration of the medical bills marked by the appellant as Ex.P5 before the Tribunal as the plastic surgery undergone by the appellant has not been disproved by the respondent, awards a sum of Rs.98,016.29/- rounded off to Rs.98,000/- towards the head of medical expenses. In regard to the contention of the Insurance Company, this Court accepts the findings of the Tribunal in directing the Insurance Company to pay the compensation amount and recover the same from the owner of the vehicle following the dictum laid down by the Hon'ble Apex Court in Anu Bhanvara etc. V. Iffco Tokio General Insurance Company Limited & Others in Civil Appeal Nos.6231 & 6232 of 2019. Moreover, this Court is of the view that the appellant had underwent plastic surgery and undergone agony both



physically and mentally and hence except the amount awarded by the Tribunal under loss of amenities, the other heads has to be enhanced. Accordingly, the amount of Rs.15,000/-, Rs.5000/- and Rs.20,000/- towards nutritious food, attendant benefits and pain & sufferings respectively are granted by this Court as against the amount awarded by the Tribunal under the said heads. In view of the foregoing reasons, the award passed by the Tribunal is modified by this Court to the following effect:-

S. No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount granted by this Court (Rs.)
1	Temporary disability-40% (Rs.2000/- per disability)	20,000	80,000 (40 x 2000)
2	Nutritious food	1,000	15,000
3	Attendant benefits	1,000	5,000
4	Pain and sufferings	10,000	20,000
5	Loss of amenities	10,000	10,000
6	Medical expenses	-	98,000
	Total	42,000	2,28,000

8. Accordingly, the Civil Miscellaneous Appeal filed by the claimant/appellant is partly allowed. As per the findings of the Tribunal, this Court directs the second respondent/Insurance Company to pay and recover the compensation awarded to the claimant/appellant from the owner of the vehicle/first respondent herein. The Insurance Company is directed to deposit the entire/balance of the compensation amount awarded to the appellant less the amount already deposited if any, before the Tribunal within a period of 8 weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant/claimant is entitled to withdraw the same on filing appropriate petition before the Tribunal. It is also made clear that the rate of interest would be 7.5% p.a. for the enhanced compensation amount from the date of appeal till the date of realization.

9. In fine, the Civil Miscellaneous Appeal is allowed in part. There shall be no orders as to costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

DP



To

The Additional Sub Court,
(The Motor Accident Claims Tribunal),
Krishnagiri.

Copy To :

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

+1cc to Mr.P.Mani, Advocate SR.No.4421

C.M.A.No.1944 of 2012

PVS(CO)
RVM(04/10/2021)