



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2021

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THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.NO.2614 OF 2011

Dr.P.Elango

S/o. Periyasamy

... Appellant

Vs.

1. P.K.Duraisamy
S/o. Kumarasamy

2. The National Insurance Co. Ltd.,
Branch Office No.II
No.1272-1273,
Palaniappa Complex,
Mettur Road, Erode.

(R1 set exparte before the Tribunal. Hence
Notice may be dispense with in this appeal)

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.300 of 2008 dated 20.10.2009 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Fast Track Court, Namakkal.

For Appellant : Mr.M.P.Thangavel

For Respondents : Mr.S.Vadivel for R2.
R1-Exparte

JUDGMENT

(This case has been heard through video conference)

The Civil Miscellaneous Appeal has been filed challenging the fair and decretal order dated 20.10.2009 passed in MCOP.No.300 of 2008 by the Motor Accident Claims Tribunal/Additional District Judge, Fast Track Court, Namakkal.

2. The case in brief is as follows:

On 02.06.2007 at about 10.30 p.m., while the petitioner was



travelling in the car bearing Registration No.TN 28 J 4789, at that time, a Mini Auto bearing Registration No.TN 33 AC 2126, driven by its driver in a rash and negligent manner, dashed against the claimant, as a result of which, he sustained grievous injuries all over the body. He was taken for treatment to C.K.Hospital, Erode and then he was shifted to Ganga Hospital, Coimbatore for further treatment.

3. Mr.M.P.Thangavel, the learned counsel for the appellant/claimant has submitted his arguments. As per his submissions, the claimant is a Doctor. Due to the injuries sustained by him, he had suffered permanent disability. Though the disability certificate was furnished by which the disability was fixed at 45%, without assigning any reason, the Tribunal had taken only 20%. Therefore, the total amount arrived by the Tribunal is too low. Therefore, claimant has preferred this appeal seeking enhancement of the compensation. He also furnished the calculation sheet wherein he suggested that Rs.2000/- awarded by the Tribunal for each percentage of disability may be adopted, but for the entire percentage of disability i.e, 45% as per the disability certificate. Therefore, if Rs.2,000/- is taken as compensation for each percentage, for 45%, it is Rs.90,000 (45x2000). The medical bills furnished totally were to the tune of Rs.2,00,413/- but some bills were photo copies. Therefore the Tribunal had rejected those bills and awarded a sum of Rs.1,20,568/- only.

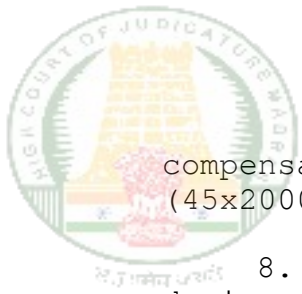
4. Mr.S.Vadivel, the learned counsel for the respondent/Insurance Company has vehemently objected stating that the Tribunal had properly arrived at the compensation. Therefore, according to him, this appeal lacks merits and has to be dismissed.

5. Point for consideration.

Whether the appellant/claimant is entitled to enhancement of compensation.

6. Perused the records in claim petition filed by the claimant before the Motor Accident Claims Tribunal/Additional District Judge, Fast Track Court, Namakkal in MCOP No.300/2008 and the order passed by the Motor Accident Claims Tribunal.

7. On perusal of the same, it is found that the amount granted as compensation for the injuries suffered by the claimant is found to be too low. Therefore, the claimant has filed this Appeal for 45% disability. The Doctor had not suffered functional disability and not affecting his avocation as a practising Doctor. In such circumstances, the contention of the claimant is found to be not acceptable. Any how, considering the disability, if Rs.2,000/- is taken as



compensation for each percentage, for 45%, it is Rs.90,000 (45x2000).

8. He would not have been able to attend to his regular work during the period of treatment and this Court fixes the monthly income of the claimant as Rs.15,000/-. Therefore, this court awards a sum of Rs.30,000/- towards loss of income during the period of treatment(i.e., 2 months). For attendant charges no amount was granted. Therefore, this Court awards a sum of Rs.10,000/- towards Attendant Charges. This Court awards a sum of Rs.10,000/- towards loss of amenities.

9. Considering the nature of injuries sustained by the claimant, this Court enhances the amount awarded under the head "Extra Nourishment" from Rs.10,000/- to Rs.15,000/-.

10. Since the appellant marked medical bills regarding the treatment taken as Ex.P.23 for a sum of Rs.2,00,413/, the same is retained and therefore, the medical expenses are enhanced from 81,913/- to 2,00,413/-.

11. Since the amounts awarded by the Tribunal under all the other heads are just and fair, the same are hereby confirmed. The break-up details of the amounts awarded under various heads are as follows:

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of Income	57,200	90,000
2	Medical Expenses	81,913	1,22,568
3	Pain and Sufferings	35,000	35,000
4	Extra Nourishment	10,000	15,000
5	Transportation	10,000	10,000
6	Attender Charges		10,000
7	Loss of earning during the treatment period		30,000
8	Loss of amenities		10,000
	Total	1,94,113	3,22,568

Rounded off- Rs.1,94,200/-

12. The point for consideration is answered in favour of the appellant/claimant and against the Insurance Company/ Respondent.

13. Accordingly, this Civil Miscellaneous Appeal is allowed. The second respondent/Insurance Company is directed to deposit



the amount, which this Court determined in this appeal, to the credit of M.C.O.P.No.300 of 2008 on the file of the Motor Accident Claims Tribunal (Additional District Judge) Namakkal, with accrued interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit along with costs, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant shall be entitled to withdraw the award amount with accrued interest. The claimant is directed to pay appropriate Court fees within a period of two months, failing which, he is not entitled to claim interest on the award amount. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dh

To

1. The Motor Accidents Claims Tribunal,
Additional District Judge,
Fast Track Court,
Namakkal.

Copy to:

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

+1cc to Mr.S.Vadivel, Advocate, S.R.No.13473

+1cc to Mr.M.P.Thangavel, Advocate, S.R.No.13437

C.M.A.No.2614 of 2011

SSV(CO)
HS(16/09/2021)