



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.03.2021
PRONOUNCED ON : 17.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2266 of 2015

Ramalingam

...Petitioner / Appellant

Vs.

1.P.Sathish

(since R1 remained exparte before the Tribunal his presence is dispensed with)

2.The Oriental Insurance Company Limited,
Oriental House, 2nd Floor,
No.115, Broadway Road,
Chennai - 108.

...Respondents / Respondents

PRAYER : This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.04.2015 and made in M.A.C.T.O.P.No.2576 of 2010, on the file of the Motor Accident Claims Tribunal and Special Sub Court No.II to deal with M.C.O.P cases, Chennai.

For Appellant : Mr.F.Terry Chellaraja

For R1 : Set exparte

For R2 : No appearance

JUDGMENT

(The case has been heard through video conference)

The claim petitioner is the appellant herein.

2.For the sake of convenience, parties are referred to as per the ranking before the Tribunal.

3.Brief facts of the case are as follows:

On 04.07.2007, at about 21.00 hours, when the petitioner/appellant herein was standing in the bus stop at G.S.T. Road, Gudilam, a lorry bearing registration No.TN-48-F-4802 came from Ulundurpet to Viluppuram road, driven by its driver in a rash and negligent manner, endangering to the public



safety, had hit the petitioner from is behind thereby the petitioner has sustained grievous injuries. Hence, the petitioner/appellant herein has filed a petition in MCOP.No.2576 of 2010, before the Motor Accident Claims Tribunal Judge, learned Special Sub Judge No.II to deal with MCOP Cases, Chennai, seeking. As aggrieved against the same, the petitioner/appellant has filed this petition, seeking enhancement of compensation.

4.The factum of the accident, manner of the accident, rash and negligent driving of the driver of the offending vehicle are not in dispute.

5.Before the Tribunal, during the course of the trial, on the side of the plaintiffs PW1 and PW2 were examined and marked Exs.P1 to P7 and on the side of the respondents no witness has been examined.

6.Heard the learned counsel for the appellant and perused the materials placed on record.

7(a).On a perusal of the records, it is seen that PW2/Dr.J.R.R.Thiyagarajan could depose that the petitioner had sustained fracture on left frontal bone, left maxilla bone and left ethmoid bone and that he has post traumatic head ache, giddiness, tremors on left hand and leg, memory deficit, difficult to open the mouth and chewing and that there was nasal block, pain and difficulty to work as mason. Accordingly, PW2 has assessed the disability at 55% partial and permanent and has issued disability certificate, which has been marked as Ex.P6.

7(b).As per Ex.P2/discharge sheet issued by the HPMER Hospital, it appears that the petitioner was treated only with conservative management by giving antibiotics. As per the records, the petitioner was given suture-less treatment and PW2 has not stated anything about the injury sustained by the petitioner on his eyes and there is no doubt that PW2 is neither an Orthopedic surgeon nor as Neuro surgeon not even a doctor, who gave treatment to the petitioner at any point of time.

7(c).It also appears from the records that PW2 has assessed the disability after five years of the accident and accordingly as the petitioner has not produced any other documents to show further treatment, the Tribunal has rightly fixed the disability at 40%. After going through evidence of the PW2 as well as Ex.P2, wherein it is stated that the petitioner has sustained Left Occipital Contusion 3.6 x 2 c.m., Fracture anterior wall of left maxillary bone, Frontal bone fracture and Left Ethmoid bone fracture. The petitioner has sustained severe head injury causing fracture of skull thereby, bleeding on the ears, severe



injury on his ears, a cut injury on his left eye, broken of teeth on the front side, a contusion on his hip, dislocation of left knee, fracture ankle of right leg and multiple injuries all over his body. Hence, this Court is inclined to fix the disability at 50%. Accordingly, the compensation is re-assessed at 50% for partial and permanent disability at the rate of Rs.2,000/- per one percentage i.e.,

$$50\% \times 2,000/- = \text{Rs.}1,00,000/-$$

and the compensation awarded by the Tribunal under others are confirmed and the same is shown as under:

S. No .	Description	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1	Disability	80,000/- (40% x 2,000)	1,00,000/- (50% x 2,000)
2	Pain and Suffering	50,000/-	50,000/-
3	Transportation charges	10,000/-	10,000/-
4	Extra Nourishment	9,000/-	9,000/-
5	Attendant Charges	5,000/-	5,000/-
6	Loss of income for three months	15,000/-	15,000/-
8	Loss of Future Prospects	40,000/-	40,000/-
9	Loss of amenities	40,000/-	40,000/-
9	Medical expenses	1,000/-	1,000/-
	Total	2,50,000/-	2,70,000/-

Hence, compensation awarded by the Tribunal is enhanced from Rs.2,50,000/- to Rs.2,70,000/- (Rupees Two Lakhs Seventy Thousand Only).

8.In the result,

(a)This Civil Miscellaneous Appeal is partly allowed to the limited extent indicated as above.

(b)The first and second respondent/Insurance Company are directed to deposit the enhanced award amount jointly and severally to the credit of MCOP.No.2576 of 2010, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, to deal with M.C.O.P cases, Chennai, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

(c)The enhanced award amount will carry interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of payment.



(d) On such deposit, the claim petitioner is permitted to withdraw the enhanced compensation amount as awarded by this Court, less the amount already withdrawn, if any.

(e) The claim petitioner shall pay necessary Court fee, if any, on the enhanced compensation amount.

(f) No costs.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

dua

To

The Motor Accident Claims Tribunal,
Special Sub Court No.II dealing with M.C.O.P cases,
Chennai.

Copy To

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

+1cc to M/s.M.Malar, Advocate, S.R.No.17176

C.M.A.No.2266 of 2015

KV(CO)
RVM(08/10/2021)