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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 10.12.2020
Judgment Delivered on : 26.02.2021

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2501 of 2012

G.Ganesan
S/o. Gangan

...Appellant/Petitioner

Vs.

1. S.Mahendran
S/o. Shanmugam

2. The Divisional Manager,
United India Insurance Company Limited
Motor Third Party Claims Office,
No.39, Greams Road,
Silingi Buildings, Chennai - 600 006.

...Respondents/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.326 of 2010 dated 03.08.2011 on the file of the Motor Accidents Claims Tribunal, District Judge - II, Kanchipuram.

For Appellant : Mr.C.Prabhakaran
For Respondents : Mr.G.Udaya shankar

JUDGMENT

(This case has been heard through video conference)

The Civil Miscellaneous Appeal has been filed challenging the fair and decretal order dated 03.08.2011 passed in MCOP.No.326 of 2010 by the Motor Accidents Claims Tribunal, District Judge - II, Kanchipuram.

2. Aggrieved by the award passed by the Motor Accident Claims Tribunal, Kanchipuram, the claimant had preferred this appeal. The claimant is the injured victim of accident who had suffered partial permanent disability.

3. The case in brief is as follows:

On 02.01.2005 at about 5.00 a.m., while the claimant/appellant was walking near by Kachapeswarar temple, at that time, the auto bearing Registration No. TN 21 D 3647 driven



by its driver in a rash and negligent manner, dashed against the petitioner, as a result of which, he sustained grievous injuries. Immediately, the petitioner was taken to Government Hospital, Kanchipuram and thereafter he was taken treatment to Puthur. The second respondent is the insurer of the auto.

4. Mr.C.Prabhakaran, the learned counsel for the appellant has submitted his arguments. As per his submissions, the Tribunal failed to appreciate the documentary evidence of the victim of accident who suffered partial permanent disability and it was issued that the disability certificate assessed by the Doctor who had been examined as P.W.2 and the assessment disability was marked as Ex.P.10.

5. The Motor Accident Claims Tribunal had granted meagre amount under various heads and thereby the total award granted to the claimant is on the lower side and not in accordance with the Motor Vehicles Act. The partial permanent disability was assessed by P.W.2, Doctor as 37%. The Motor Accident Claims Tribunal had granted Rs.1500/- for each percentage. Thereby, for 37% of permanent disability Rs.55,000/- only was awarded. Even under non-pecuniary heads like loss of income during the period of treatment, extra nourishment, damages to clothes, pain and sufferings, transport to hospital, only meagre amounts were awarded. Therefore, the total amount awarded is too low.

6. Mr. G.Udaya shankar, learned counsel for the respondent/Insurance Company submitted his arguments. As per his submissions, the award passed by the Motor Accident Claims Tribunal, Kanchipuram is acceptable as per the provisions of Motor Accident Case Rules and the Motor Vehicles Act. On assessment of the evidence before the Tribunal, the Tribunal had granted award of Rs.79,700/- which is a reasonable amount and meets the ends of justice.

7. Point for consideration Whether the appellant/claimant is entitled to enhancement of compensation.

8. Perused the claim petition filed by the appellant/claimant before the Motor Accident Claims Tribunal in MCOP.No.326/2010, the counter filed by the second respondent/Insurance Company and the Judgment/Order passed by the Motor Accident Claims Tribunal and the Memorandum of appeal filed in this appeal.

9. On perusal of the award passed by the Motor Accident Claims Tribunal, it is found that the Tribunal had not followed the multiplier system. It had been held by the Hon'ble Supreme Court in all the cases of partial permanent disability, the multiplier system need not be considered, instead, the



alternative system of Percentage may be adopted. Here, the appellant who was a claimant before the Motor Accident Claim Tribunal had let in evidence. As per the evidence, he was earning Rs.4500/-. He had not suffered functional disability. Therefore, the Tribunal awarded a sum of Rs.4200/- towards loss of income to be struck off. In such cases, the percentage system will be beneficial. Therefore, for 37% disability instead of Rs.1500/- awarded by the Tribunal, Rs.2,000/- for each percentage is awarded. Therefore, this Court awards a sum of Rs.74,000/- towards partial permanent disability. The loss of income to the claimant would be Rs.6,000/- per month as there is evidence that the claimant was paid to Rs.200/- per day. If that is calculated for 30 days, Rs.6,000/- is loss of income per month. He would have been unable to attend his regular work during the period of treatment. Therefore, this Court awards a sum of Rs.18,000/- towards the loss of income during the period of treatment.

10. Considering the period of treatment and the nature of injuries sustained by the appellant, Rs.10,000/- and Rs.1000/- awarded by the Tribunal towards Pain and Sufferings and Transportation respectively are meagre. Therefore, this Court enhances the same to Rs.30,000/- and Rs.2,000/- towards Pain and Sufferings and Transportation respectively and this Court enhances the extra nourishment from Rs.5,000/- to Rs.25,000/-.

11. Considering the nature of injuries sustained in the right feet and hip, he would be unable to attend his regular work. Therefore, this Court awards a sum of Rs.10,000/- towards Attendant Charges.

12. The Tribunal awarded a sum of Rs.1000/- towards Damages to clothes and it is reasonable and the same is 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	4,200	-
2	Loss of income during the period of treatment	3,000	18,000
3	Extra Nourishment	5,000	25,000
4	Damages to clothes	1,000	1,000
5	Transportation	1,000	2,000
6	Pain and Sufferings	10,000	30,000



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Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
7	Permanent Disability	55,500	74,000
8	Attendant Charges	-	10,000
	Total	79,700	1,60,000

13. The Points for consideration is answered in favour of the appellant/claimant and against the respondent/Insurance Company.

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.326 of 2010 on the file of the Motor Accidents Claims Tribunal, District Judge - II, Kanchipuram, with accrued interest at the rate of 7.5% per annum from the date the 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. No costs.

s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The District Judge-II
Motor Accidents Claims Tribunal,
Kanchipuram.

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

+1 CC to Mr.C.Prabhakaran, Advocate sr 12121

+1 CC to Mr.G. Udhaya Kumar, Advocate srt 11929.

C.M.A.No.2501 of 2012

KK(CO)

SP(06/09/2021)