



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No.3107 of 2012

S.Sundaram

...Appellant/Claimant

Versus

1.K.Murugesan

2.P.Murugesan

3.M/s.United India Insurance Co. Ltd.,
Udumalpet Branch having its registered
Office at No.178, Dr. Nanjappa Road,
Coimbatore - 641 018.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Award and Decree dated 30.11.2011 made in M.C.O.P.No.89 of 2007 on the file of the Motor Accident Claims Tribunal, Additional District Judge/Fast Track Court No.2, Coimbatore.

For Appellant : Mr.A.S.Vijaya Raghavan

For R1 & R2 : No Appearance

For R3 : M/s.I.Malar

J U D G M E N T

This appeal is laid as against the judgment and decree dated 30.11.2011 made in M.C.O.P.No.89 of 2007 on the file of the Motor Accident Claims Tribunal, Additional District Judge/Fast Track Court No.2, Coimbatore.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimant is that on 10.08.2004, when he was riding his motor cycle on the left side of the road, the



lorry, which was going opposite side in a rash and negligent manner without adhering to the traffic rules and dashed against the appellant. Due to the said accident, the claimant sustained injuries on the left hand and face. Thereafter, he was taken to C.M.C. Hospital, Coimbatore, where first aid was given. Thereafter, he was shifted to Ganga Hospital and admitted as inpatient and he has undergone surgery in the left hand and discharged only on 16.08.2004. Thereafter, he had taken a treatment as out patient. Hence, the claim petition.

4. Resisting the same, the third respondent filed a counter stating that the accident took place only due to the rash and negligent driving of the driver of the lorry and as such, the third respondent being the insurer of the vehicle owned by the second respondent, the third respondent is not held to be liable to pay any compensation as claimed by the claimant and sought for dismissal of the claim petition.

5. On the side of the claimant, he examined P.W.1 and P.W.2 and marked Ex.P1 to E.P12. On the side of the respondents, no one was examined and no exhibits were marked. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal fastened the liability on the third respondent and awarded a sum of Rs.1,01,763/- as compensation. Aggrieved by the same, the claimants filed the present appeal for enhancement of compensation.

6. The learned counsel appearing for the claimant would submit that the claimant suffered fracture on his left forearm and he was fixed plate. Therefore, he could not able to continue his job. He is having utensils shop at Madukarai, Coimbatore. He had incurred medical expenses and also plate which was fixed at left hand. Even then, the Tribunal failed to award future medical expenses. Insofar as disability is concerned, he was assessed 25% permanent disability. Though, the claimant was earned a sum of Rs.6,000/- p.m, the Tribunal had taken only Rs.3,000/- as monthly income even without adopting the multiplier method and awarded only for months under the head of Loss of Income. Therefore, the compensation awarded by the Tribunal is liable to be enhanced.

7. Per contra, the learned counsel for the first respondent would submit that though the claimant claimed future medical expenses, there is no iota of evidence that he was directed to remove the plate fixed on the left hand. Due to the injury, there is absolutely no loss of earning and as such the Tribunal rightly awarded the compensation fixing a sum of Rs.1,500/- per percentage for the disability.



8. Heard, the learned counsel for the appellant as well as the learned counsel for the respondents.

9. The accident was took place only on the negligence of the driver of the vehicle owned by the second respondent. Due to which, the claimant sustained fracture on his left hand and undergone surgery. The disability assessed at 24%. He is doing a business and was earning a sum of Rs.6,000/- per month at the time of accident. He had also taken treatment for six months, after discharging from the hospital. The Tribunal has taken Rs.1,500/- per percentage on disability and it is liable to be enhanced. Considering the above, the award passed by the Tribunal is modified as follows:

Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
Permanent Disability	36,000.00	48,000.00
Loss of income	9,000.00	24,000.00
Transport charges	2,000.00	5,000.00
Extra Nourishment	5,000.00	10,000.00
Damages of Cloth	500.00	500.00
Medical Expenses	31,763.00	31,763.00
Attender	2,500.00	10,000.00
Pain and Suffering	15,000.00	25,000.00
TOTAL	1,01,763.00	1,54,263.00

10. In the result the Civil Miscellaneous Appeal is partly allowed as follows:-

(i) The award passed by the Tribunal is enhanced from Rs.1,01,763/- to Rs.1,54,263/-.

(ii) The award amount will carry the interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

(iii) The third respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of copy of this Judgment.

(iv) On such deposit, the claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal.



(v) The claimant shall pay requisite Court fee before the receipt of the copy of the judgment for the enhanced compensation.

(vi) There shall be no order as to costs.

WEB COPY

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

lpp

To

1. The Additional District Judge/
Fast Track Court No.2,
Motor Accidents Claim Tribunal,
Coimbatore.
2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

C.M.A.No.3107 of 2012

VG II (CO)
K.RK. (19.11.2021)