



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

CORAM:

THE HON'BLE Mr.JUSTICE D.KRISHNAKUMAR

C.M.A.No.288 of 2013

Saminathan

... Appellant/Claimant

..Vs..

1.Rajasekar

2.Deenadayalan

3.The United India Insurance Company Limited.,

Rep by its Branch Manager,

123-A, No.2 Road,

Mayiladuthurai,

Nagapattinam Dt.

... Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order of Motor Accidents Claims Tribunal (Additional District Court), Puducherry at Karaikal, dated 06.02.2008 made in M.C.O.P.No.30 of 2007.

For Appellant : Mr.S.Sounthar

For R1 & R2 : No Appearance

For R3 : Mrs.R.Sreevidhya

JUDGMENT

This Civil Miscellaneous Appeal is filed against the fair and decreetal order of Motor Accident Claims Tribunal (Additional District Court) at Karaikal, dated 06.02.2008 in M.A.C.T.O.P.No.30 of 2007.

2.On 11.12.2006, at about 06.30 p.m., when the petitioner was proceeding from South to North on the extreme left side of Bharathi Road, opposite to Ammaiyar Nagar, Keezhakasakudy near Santhana Restaurant, the 1st respondent, who was riding the Hero Honda bike bearing registration No.TN-51-U-0265 on the same direction in rashly and negligently, hit the petitioner's back side. Due to which, the petitioner sustained serious injuries on his both legs and hands including multiple fractures. The petitioner was taken treatment as inpatient and discharged on 16.12.2006. The left coelus of the petitioner was fractured.



Claiming that the accident had happened due to the rash and negligent driving of the driver (1st respondent) of the vehicle, which belongs to 2nd respondent herein, insured with the 3rd respondent, the appellant/claimant has filed a claim petition before the Tribunal claiming an award of Rs.3,00,000/- as compensation.

3.Before the Tribunal, two witnesses were examined on the side of the appellant/claimant and Ex.P1 to Ex.P10 were marked. On the side of the respondents, no witnesses were examined and no exhibits were marked. After considering the oral and documentary evidence, the Tribunal has awarded a total compensation of Rs.18,600/- along with the interest at 7.5% p.a. Aggrieved by the said quantum of compensation, the appellant/claimant has come up on appeal seeking enhancement.

4.The learned counsel for the appellant would submit that the petitioner was an Agricultural Coolie and a cattle broker and was earning not less than Rs.200/- per day. Due to the injuries sustained, the petitioner is unable to do the regular work and he is suffering permanent disability and he is entitled for enhancement of the compensation amount. But the tribunal did not appreciate the case of the appellant and awarded meager compensation of Rs.18,600/-. The learned counsel for the appellant would further submit that the award passed by the Tribunal under the various heads are inadequate, hence, he seeks enhancement of the compensation amount.

5.The learned counsel appearing for the 3rd respondent/ United India Insurance Company Limited would submit that the aforesaid grounds raised by the learned counsel for the appellant for enhancement of compensation cannot be entertained and he would further submit that the Tribunal has considered the oral and relevant documentary evidence in detail and awarded a fair and just compensation to the appellant. Therefore, the appeal is liable to be dismissed.

6.Heard the learned counsel for the appellant and the learned counsel for the 3rd respondent. Though notice has been served on the respondents 1 and 2, none appeared for them.

7.This Court considered the rival submissions and perused the materials available on records.

8.From the Accident Register (Ex.P9), it is seen that the appellant/claimant sustained fracture injury at the lower end of radius left side and from the Discharge Summary (Ex.P6), it is seen that the fracture of colesus displaced. Due to the aforesaid accident, the petitioner, who is an Agricultural



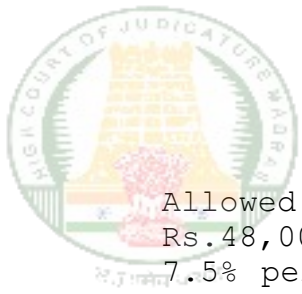
Coolie, facing difficulty in lifting heavy objects and unable to hold object properly. The Doctor, who was examined as PW2 on the side of the appellant/claimant deposed that he examined the appellant and assessed 25% of disability caused due to the accident and issued the Disability Certificate (Ex.P8). But, the Tribunal has fixed only 5% as disability. The said assessment of the Tribunal is without any basis and no reason for fixing 5% disability has been given by the Tribunal. Therefore, this Court fixes 15% disability by taking Rs.1,500/- per percentage and for 15% disability, the amount comes to Rs.22,500/-.

9.As far as the head of pain and sufferings is concerned the Tribunal has awarded a sum of Rs.5,000/-, this Court is of the view that the said amount under the head of pain and sufferings is on the lower side and the same is enhanced to Rs.10,000/-. For the head of loss of amenities, the Tribunal has not awarded any amount and this court awards a sum of Rs.5,000/- under the said head.

10.The Tribunal has awarded a sum of Rs.2,000/- towards loss of income. Due to the injuries and disability suffered by the appellant in the accident, he would not have attended his work atleast for three months. Hence, the compensation awarded by the Tribunal towards loss of income during the treatment period is enhanced to Rs.6,000/-. The compensation awarded for damages to the clothing is confirmed.

11.Thus, the compensation awarded by the Tribunal is modified under various heads as follows:-

Heads	Compensation awarded by the Tribunal	Compensation Enhanced/ awarded by this Court
Pain and Sufferings	Rs.5,000/-	Rs.10,000/-
Loss of Amenities	-	Rs.5,000/-
Extra Nourishment	Rs.1,000/-	Rs.2,000/-
Transport Charges	Rs.500/-	Rs.2,000/-
Loss of Income during the treatment period	Rs.2,000/-	Rs.6,000/- (Rs.2,000 x 3)
Disability	Rs.9,600/-	Rs.22,500/- (Rs.1,500 x 15%)
Damages to the Clothing	Rs.500/-	Rs.500/-
Total	Rs.18,600/-	Rs.48,000/-



12. Thus, the Civil Miscellaneous Appeal is Partly Allowed. enhancing the compensation amount from Rs.18,600/- to Rs.48,000/- (Rupees Forty Eight Thousand only) with interest @ 7.5% per annum from the date of claim petition till the date of payment. The third respondent/Insurance Company is directed to deposit the award amount as determined above, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the award amount, less the amount(s) if any already withdrawn by filing necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Additional District Court, Puducherry at Karaikal
2. The Section Officer,
VR Section, High Court, Madras.

+1CC to Mr.S.Sounthar, Counsel for the Appellant, Sr.No.12899

C.M.A.No.288 of 2013

KJ (CO)

K.RK. (29.09.2021)