

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2021

CORAM:

HONOURABLE MR.JUSTICE R.SUBBIAH
AND
HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.NO.3062 OF 2019

Chinnamani,
Son of Karuppan @ Karuppannan

... Appellant/Appellant

Vs.

1. Sivakumar, S/o Kulandaivel
2. The Manager,
The Oriental Insurance Company Ltd.,
No.121(3), Raja Complex,
Opp. to Panchamuga Vinayagar Temple,
Paramathi Velur Taluk,
Namakkal District-638 182.

... Respondents/Respondents

Prayer:-

Civil Miscellaneous Appeal (C.M.A) filed under Section 173 of the Motor Vehicles Act, against the Order and Decree dated 27.04.2018 in M.C.O.P.No.23 of 2017 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Namakkal.

For appellant : Mr.C.Thangaraju

For respondents : R-1 set ex-parte before the Tribunal
Mr.R.Sivakumar for R-2

JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah, J)

The Civil Miscellaneous Appeal is heard through video-conferencing.

2. Not being satisfied with the quantum of compensation awarded by the Tribunal, in and by Award dated 27.04.2018 passed in M.C.O.P.No.23 of 2017 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Namakkal, the present

Civil Miscellaneous Appeal had been filed by the appellant/claimant.

3. Since the present appeal had been filed questioning only the quantum of compensation awarded by the Tribunal, we are not traversing into the other aspects of the Award passed by the Tribunal.

4. It is the case of the appellant/claimant that on 02.07.2016 at about 9.45 p.m., while the appellant/claimant was riding two-wheeler bearing Registration No.TN-39-V-5863 near Kabilar Malai (near KNS Poultry Farm), on the left side, a Tractor bearing Reg.No.TN-88-Z-9946 came behind the said two-wheeler in a rash and negligent manner and hit the said two-wheeler, as a result of which, the claimant lost balance and fell down and sustained injuries below left knee. Immediately, he was taken to a private hospital at Namakkal, and thereafter, he was shifted to another private hospital, Salem, where he took treatment as an in-patient. During the course of treatment, his left leg below the knee was amputated. He is an agricultural coolie. On account of the permanent disability suffered by him, he was not in a position to carry on his avocation. Hence, he made a claim for a sum of Rs.40 lakhs as compensation before the Tribunal as against the first respondent herein, who is the owner of the said Tractor, which is insured with the insurer, namely the second respondent-Oriental Insurance Company.

5. The case of the claimant before the Tribunal was resisted by the second respondent-Insurance Company by taking a defence that at the time of the alleged accident, the driver of the said Tractor was driving the same slowly and diligently by following the Traffic Rules and Regulations. It is the claimant who was driving the said two-wheeler in a rash and negligent manner in a public place and suddenly he only came on the middle of the road without noticing the Tractor coming behind, and as a result of the negligent act of the claimant, the said accident had happened. The second respondent-Insurance Company had taken a further defence that the driver of the Tractor did not have a valid endorsement to drive the category of vehicle involved in the accident, and therefore, the second respondent-Insurance Company is not liable to pay the compensation amount, and thus, they prayed for dismissal of the Claim Petition.

6. In order to prove the claim, on the side of the claimant, the claimant examined himself as P.W.1, besides, one Dr.Sivalingam was examined on his side as P.W.2, and Exs.P-1 to P-14 were marked on the side of the claimant.

7. On the side of the Insurance Company, D.Ws.1 to 3 were examined and Exs.D-1 to D-5 were marked.

8. The Tribunal, on an analysis of the entire evidence on record, held that the accident had occurred due to rash and negligent driving on the part of the driver of the said Tractor, which is insured with the second respondent-Insurance Company and passed an Award of compensation of Rs.4,96,680/-. The break-up details of the amounts awarded by the Tribunal are as follows:

Sl. No.	Head under which the amounts are awarded by the Tribunal	Amount (in Rs.)
1	Transport expenses to hospital	15,000
2	Nutrition	25,000
3	Medical bills	1,09,480
4	Pain and suffering	70,000
5	Loss of future earning capacity	2,77,200
	Total	4,96,680

Challenging the above Award of the Tribunal, the present appeal is filed by the claimant.

9. The Tribunal permitted the second respondent herein (Insurance Company) to recover the amount of compensation as awarded thereunder, from the owner of the vehicle, after paying the compensation to the claimant, since there is violation of the conditions of the Policy.

10. Now, the present appeal has been filed by the claimant stating that sum of Rs.2,77,200/- awarded by the Tribunal under the head "loss of earning capacity", is extremely on the lower side. In this regard, it is the submission of the learned counsel for the appellant/claimant that the Tribunal, while calculating the compensation under the head "loss of earning capacity", had taken only a meagre sum of Rs.3,000/- as the monthly income of the claimant, and thereafter, by applying multiplier "11", awarded Rs.2,77,200/- in proportion to 70% of the disability as assessed by P.W.2 Doctor, which is evident from his deposition. Thus, the learned counsel for the appellant/claimant submitted that by fixing atleast Rs.15,000/- as the monthly income of the claimant, the amount awarded by the Tribunal under the head "loss of earning capacity" could be enhanced.

11. Per contra, while supporting the Award passed by the Tribunal, it is the submission of the learned counsel appearing for the second respondent/Insurance Company that the amounts as

awarded by the Tribunal under various heads are just and fair, and thus, he prayed for dismissal of the present appeal.

12. Keeping the submissions made on either side, we have carefully gone through the entire materials available on record.

13. We find that the accident had occurred in the year 2016. Considering the cost of living prevailing at the relevant point of time, we are of the view that the sum of Rs.3,000/- fixed by the Tribunal as the monthly income of the claimant, is on the lower side. At the same time, in the absence of any documentary proof relating to the income of the claimant, we are not inclined to fix the sum of Rs.15,000/- as the monthly income of the claimant. However, we are of the opinion that by fixing a sum of Rs.7,500/- as the monthly income of the claimant, the amount awarded by the Tribunal under the head "loss of earning capacity" could be enhanced to arrive at a just and proper compensation. Accordingly, Rs.7,500/- is fixed as the monthly income of the claimant. If so fixed, the annual income works out to Rs.90,000/- ($\text{Rs.7,500} \times 12$). If 10% is added towards future prospects of the claimant, the annual loss of income works out to Rs.99,000/- ($90,000 \times 10\% = 9,000$) ($90,000 + 9,000 = 99,000$). Considering the age of the claimant being 55 years at the time of accident, the correct multiplier that has to be applied is "11". If the said multiplier of "11" is applied, the loss of earning capacity works out to Rs.10,89,000/-. Though P.W.2 Doctor had assessed the disability of the claimant at 70%, we are of the considered opinion that, since the portion of leg below the left knee, had been amputated, the claimant, who was an agricultural coolie by avocation, cannot carry on his avocation for the rest of his life. Hence, instead of apportioning the amount in proportion to 70%, we are inclined to award the entire sum of Rs.10,89,000/- as compensation under the head "loss of earning capacity". Therefore, the sum of Rs.2,77,200/- awarded by the Tribunal under the head "loss of earning capacity", is hereby enhanced to Rs.10,89,000/- as calculated above.

14. Except the above enhancement of compensation under the head "loss of earning capacity" at Rs.10,89,000/-, the amounts awarded by the Tribunal under the other heads are unaltered.

15. The break-up details of the Award now being passed by this Court, in comparison with the amounts awarded by the Tribunal, are as follows:

Sl. No.	Head under which the amounts are awarded	Amount (in Rs.) awarded by the Tribunal	Amount (in Rs.) awarded by this Court
1	Transport expenses to hospital	15,000	15,000
2	Nutrition	25,000	25,000
3	Medical bills	1,09,480	1,09,480
4	Pain and suffering	70,000	70,000
5	Loss of future earning capacity	2,77,200	10,89,000
	Total	4,96,680	13,08,480

16. Thus, this appeal is partly allowed. The total compensation awarded by the Tribunal is hereby enhanced to Rs.13,08,480/- (Rupees thirteen lakhs eight thousand four hundred and eighty only), with interest at 7.5% per annum from the date of claim petition till the date of depositing the entire compensation before the Tribunal. The second respondent-Insurance Company is directed to deposit the entire compensation as awarded by this Court, along with accrued interest and costs as awarded by the Tribunal, 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 entire compensation amount in accordance with law, along with accrued interest and costs as awarded by the Tribunal, less the amount (s) if any already withdrawn by him. The appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation amount. In other respects, the Award passed by the Tribunal is confirmed. No costs.

Sd/-
सत्यमेव जयते

Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate, Namakkal.

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

+2cc to Mr.C.Thangaraju, Advocate, S.R.No.1529
+1cc to Mr.R.Sivakumar, Advocate, S.R.No.1677

C.M.A.No.3062 of 2019

RP (CO)
CS/15/03/2021



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