



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.06.2021

CORAM

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

Civil Miscellaneous Appeal No. 1220 of 2020

Mohan

..Appellant/Petitioner

Versus

1.Sivakumar

2.M/s.United India Insurance Company Limited,
represented by its Divisional Office-II (HUB),
office at: No.104-A, Peramanoor Main Road,
Salem-7.

..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 02.12.2019 made in M.C.O.P. No. 1864 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Judge-I, Salem.

For Appellant : Mr.M.Guruprasad

For R2 : Mr.S.Arunkumar

For R1 : set ex-parte

JUDGMENT

This civil miscellaneous appeal has been filed by the appellant/claimant for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Special Sub Judge-I, Salem., in M.C.O.P. No. 1864 of 2018 dated 02.12.2019.

2. As per the averments in the claim petition filed before the Tribunal, on 04.04.2018 at about 11.50 p.m., while the petitioner was riding a motor cycle bearing registration number TN 28 AY 4116 on the side of the Kodumudi to Muthur Road, near Ichipalayam, a tractor bearing registration number TN 33 BA 5745 was driven by its driver in a rash and negligent manner and dashed against the petitioner. Due to the said accident, the petitioner sustained multiple fractures all over the body. Immediately after the accident the petitioner was taken to Government Hospital, Kodumudi and then he was taken to Government Hospital Erode. From there he was shifted to KMCH Speciality Hospital, Erode. A criminal case has been registered



against the said driver of the tractor by the Kodumudi Police Station in Crime No.59 of 2018. Hence the petitioner claimed a sum of Rs.50,00,000/- towards compensation for the injuries sustained by him in the accident.

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3. Before the Tribunal, the 2nd respondent/insurance company filed counter by denying the manner of accident as alleged in the claim petition. The Insurance Company also pleaded contributory negligence on the part of the petitioner. It is also stated that the petitioner was not wearing helmet at the time of accident. It is further stated that though the accident was on 04.08.2018 reporting of the accident and registration of FIR was on 05.04.2008 and there is no explanation for the delay by the petitioner. The Insurance Company prayed for dismissal of the petition.

4. In order to prove the claim, on the side of claimant, the wife of the injured was examined as P.W.1 and two other witnesses, one Mr.Loganathan and Mr.Senthil were examined as P.W.2 and 3 respectively.19 documents were marked viz., Ex.P.1 to P.19. On the side of the second respondent one Assisant Manager of the Insurance Company was examined as P.W.1 and the policy copy of the tractor was marked as Ex.R1.

5. The Tribunal after analysing the entire evidence available on record came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the tractor belongs to the first respondent and insured with the second respondent and passed an award for a sum of Rs.22,00,287/- under various heads.

6. Not being satisfied with the award passed by the Tribunal, the present appeal has been filed by the claimant for enhancement of compensation.

7. The learned counsel for the appellant would submit that injured was hale and healthy at the time of accident and he was a driver of heavy goods vehicle under the employment of P.W.3 who is the proprietor of V.S.Kabil Transport and was earning not less than Rs.18,000/- per month. However, the Tribunal has erroneously fixed the monthly income of Rs.7,500/- only, which needs interference of this Court. Though the appellant has filed this Appeal raising several grounds, the main contention of the appellant before this Court is only with regard to the monthly income and future medical expenses taken by the Tribunal. Hence, this Court is not traversing on other aspects of the case.

8. The learned counsel for the 1st respondent would submit that award amount passed by the Tribunal is perfectly in order and the same may be confirmed.



9. Heard the counsel for both sides and perused the materials placed on record. The Tribunal, on appreciation of the oral and documentary evidence, awarded compensation under various heads as under.

Sl.No	Head under which the amount is awarded	Amount awarded by the Tribunal (in Rs.)
1	Pain and sufferings	Rs.60,000/-
2	Medical Expenses	Rs.9,46,787/-
3	Transportation	Rs.40,000/-
4	Extra Nourishment	Rs.40,000/-
5	Attendance Charges	Rs.40,000/-
6	Damage of cloths	Rs.1,000/-
7	Loss of Amenities	Rs.60,000/-
8	Permanent Disability	Rs.10,12,500
	Total	Rs.22,00,287/-

10. Admittedly the accident was of the year 2018 and with regard to the income of the appellant, the employer of the claimant was examined as P.W.3. Though P.W.3 was examined to prove the avocation and income of the claimant, no documentary evidence was adduced to prove that the claimant was earning Rs.18,000/- per month. Hence the Tribunal has taken Rs.7,500/- as monthly income. Considering the fact that the accident was of the year 2018 and no rebuttal evidence was let in on the side of the second respondent with regard to the employment of the claimant. The injured as a driver would have definitely earned a sum of Rs.12,000/- per month. Hence, this Court is inclined to take the monthly income as Rs.12,000/- per month.

11. Pertaining to the future medical expenses, the learned counsel for the appellant would submit that for the injuries sustained by the claimant, the Salem Medical Board has given 60% disability. However, the Tribunal has not awarded any compensation towards future medical expenses.

12. Considering the injuries sustained and the treatment taken by the appellant a reasonable compensation ought to have been awarded by the Tribunal. Hence this Court is of the view that it is reasonable that a sum of Rs.50,000/- is to be awarded towards future medical expenses and the same is awarded.

13. This Court has already fixed the monthly income of the claimant as Rs.12,000/-. Further 40% is to be added towards future prospects. So, adding Rs.4,800/- to Rs.12,000/-, amount of Rs.16,800/- is the monthly income, that will be earned by the appellant, if not met with the accident. Further applying multiplier 15 and taking disability as 60%, the compensation



towards permanent disability to the appellant is arrived as under:-

$16,800 \times 12 \times 15 \times 60/100 = 18,14,400/-$.

Except the above said modifications, the award passed by the Tribunal under various heads are confirmed. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs. The compensation awarded by the Tribunal is modified as follows:

Sl. No	Head under which the amount is awarded	Amount awarded by the Tribunal(in Rs.)	Amount awarded by this Court (in Rs.)	Award confirmed or enhanced or granted
1	Pain and sufferings	Rs.60,000/-	Rs.60,000/-	confirmed
2	Medical bill	Rs.9,46,787/-	Rs.9,46,787/-	confirmed
3	Transportation	Rs.40,000/-	Rs.40,000/-	confirmed
4	Extra Nourishment	Rs.40,000/-	Rs.40,000/-	confirmed
5	Attendance Charges	Rs.40,000/-	Rs.40,000/-	confirmed
6	Damage of clothes	Rs.1,000/-	Rs.1000/-	confirmed
7	Loss of Amenities	Rs.60,000/-	Rs.60,000/-	confirmed
8	Permanent Disability	Rs.10,12,500	Rs.18,14,400/-	enhanced
9	Future Medical Expenses	---	Rs.50,000/-	Now granted
	Total	Rs.22,00,287/-	Rs.30,52,187/-	Enhanced to Rs.8,51,900/-

*"14.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.22,00,287/- is hereby enhanced to Rs.30,52,187/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the necessary Court fee, if any, on the enhanced amount of compensation. The 2nd respondent, insurer of the tractor is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1864 of 2018 on the file of Motor Accidents Claims Tribunal, Special Sub Judge-I, Salem, at the first instance and recover the same from the 1st respondent, owner of the vehicle.



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On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs."

Sd/-
Assistant Registrar
DATED:09.02.2022

***Deleted and substituted
as per order of
this Court dated 23.12.2021
and made in CMA.1220/2020**

**-s/d-
Assistant Registrar(CS I)**

//True Copy//

Sub Assistant Registrar

mpa
To

1.The Motor Accident Claims Tribunal,
Special Subordinate Judge-I,
Salem.

to be substituted the order

already despatched on **06.12.2021**

2.The Section Officer
Vernacular Records Section
High Court, Madras.

+1cc to Mr.M.Guruprasad, Advocate Sr No.**69874**
+1cc to Mr.S.Arunkumar, Advocate Sr No.29637

CMA.No.1220 of 2020

MG (CO)
PR (16/11/2021)
MG(CO)
A.SK(11.02.2022)