



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.1391 of 2020

Dhanasekar @ Dhanasekaran

...Appellant/Petitioner

Vs.

1.Ramasamy

2.National Insurance Co., Ltd.,
2nd Floor, 81-D Chetty Street,
Opp.New Bus Stand,
Tiruchengode, Namakkal District.

3.Periyasamy Udaiyar

4.New India Assurance Co., Ltd.,
66-C, North Car Street, Tiruchengode,
Namakkal District.

5.Jeyabakthi

6.United India Insurance Co., Ltd.,
DIV-I, Peramanur Road, Salem - 636 007.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in MCOP.No.38 of 2015 dated 28.08.2019, on the file of the Motor Accident Claims Tribunal / Sub-ordinate Judge Court, Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents: Mr.D.Bhaskaran for R2

Mr.S.Dhakshinamoorthy for R4

Mr.A.Dhiraviyanathan for R6

R1, R3 & R5 - No Appearance





4.The 5th respondent, owner of the vehicle, which was driven by the claimant and the Insurance Company namely, 6th respondent resisted the claim contending that a claim form has been submitted and monthly income of the deceased was exgenerated. It was also their further contention that it was the lorry, which was responsible for the accident. The Tribunal, which examined the evidence on record found that the accident was caused due to the rash and negligent of driving of the lorry insured with the 2nd respondent Insurance Company, which is liable to pay compensation. On the quantum, the Tribunal awarded following amounts under various heads:-

Permanent Disability	Rs.30,000/-
Pain and Suffering	Rs.15,000/-
Extra Nourishment and Loss of Articles	Rs.5,000/-
Attender Charges	Rs.10,000/-
Medical Expenses (including bills)	Rs.1,15,310/-
Transport Expenses	Rs.10,000/-
Loss of income (for a period of 3 months)	Rs.24,000/-

Total	Rs.2,09,210/-

5.Mr.T.S.Arthanareeswaran, learned counsel appearing for the appellant would vehemently contend that the Tribunal erred in awarding compensation for disability on the percentage basis. According to him, the Tribunal should have applied multiplier method, since the injuries have resulted in a functional disability. He would also point out that the claimant is a driver and the injuries would have a lasting impact and he cannot carry on the avocation as a driver with the same level of comfort. The learned counsel would also point out that the Tribunal had awarded only Rs.3,000/- per percentage of disability, which is also on the lower side. He would further fault the Tribunal for awarding only Rs.15,000/- for pain and suffering. Considering the fact that both the bones in the right leg were fractured and there were fractures in the rib also, the Tribunal should have granted some more amount for pain and suffering. He would further contend that loss of income awarded at Rs.24,000/- is very low.

6.Mr.D.Bhaskaran, learned counsel appearing for the 2nd respondent / Insurance Company, insurer of the lorry would submit that the award on the whole is reasonable. May be there are some deficiencies under certain heads but the same alone cannot be a ground to interfere with the award. I have considered the submissions of the learned counsel.



7.The Medical Board has assessed the disability at 10%. Considering the nature of injuries, there cannot be any functional disability. In fact, the report of the Medical Board shows that the claimant can perform all physical activities listed in the report of the Medical Board as Item Nos.1 to 11 under special heading 4, which deals with physical requirements. The Medical Board had assessed the disability at 10% and it has not found any functional disability. Therefore, the Tribunal was justified in adopting percentage method instead of applying multiplier method for assessing the compensation for permanent disability. At the same time, considering the age of the claimant as well as the date of the accident, I am of the opinion that the Tribunal could have done well to award Rs.4,000/- per percentage instead of Rs.3,000/-.

8.As far as the award under the head of pain and suffering, I find it to be too low. The fact that there were fractures in both the bones of the right leg is not denied and there were fractures in the rib bones also. It is common knowledge that fracture of a rib bone takes long time to heal and it is extraordinarily painful. Therefore, the award of Rs.15,000/- for pain and suffering is on the lower side. I am of the opinion that a sum of Rs.30,000/- would be just compensation. The award of Rs.24,000/- for loss of income is also on the lower side. Considering the fact that the Appellant claims to be a driver by profession, I am of the opinion that award of Rs.30,000/- on loss of income at Rs.10,000/- per month for period of three months would be reasonable. In view of the above, the award of the Tribunal is modified and compensation is fixed as follows:-

Permanent Disability	Rs.40,000/-
Pain and Suffering	Rs.30,000/-
Extra Nourishment and Loss of Articles	Rs.5,000/-
Attender Charges	Rs.10,000/-
Medical Expenses (based on bills)	Rs.1,15,310/-
Transportation Charges	Rs.10,000/-
Loss of Income (for period of 3 months)	Rs.30,000/-
Future Medical Expenses	Rs.10,000/-
Total	Rs.2,50,310/-



Permanent Disability	Rs.40,000/-
Rounded off to	Rs.2,50,000/-

9.This civil miscellaneous appeal therefore, partly allowed. The awarded granted by the Tribunal is enhanced to Rs.2,50,000/-. The Insurance Company is directed to deposit the enhanced amount with interest at 7.5% per annum from the date of filing of the original petition till date of deposit to the credit of MCOP.No.38 of 2015 within a period of six weeks from the date of receipt of the copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire amount. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

kkn
To:-

1.The Motor Accident Claims Tribunal,
Sub-ordinate Judge, Tiruchengode.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+2 Ccs to Mr.T.S.Arthanareeswaran, Advocate sr. 64263

CMA.No.1391 of 2020

SRA (CO)
SP (24/01/2022)