



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.04.2021

Coram :

THE HONOURABLE MRS. JUSTICE S.KANNAMMAL

Civil Miscellaneous Appeal No. 1828 of 2014

Murugesan

.. Appellant/ Petitioner

Versus

1.K.Selvaraj

2.National Insurance Co.Ltd.,

Tiruchengodu Town,

Namakal District.

3.Senthil Kumar

.. Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of The Motor Vehicles Act, 1988 against the Judgment and Decree dated 30.07.2004 made in M.C.O.P.No.323 of 1997 on the file of the Motor Accident Claims Tribunal and Sub-Judge, Attur.

For Appellant : Mr.A.A.Venkatesan

For R2 : M/s.S.Vadivel

JUDGMENT

(heard through video-conferencing)

This Civil Miscellaneous Appeal is filed seeking for enhancement of compensation granted by the Tribunal in the award dated 30.07.2004 made in M.C.O.P.No.323 of 1997 on the file of the Motor Accident Claims Tribunal and Sub-Judge, Attur.

2. The appellant is claimant in M.C.O.P.No.323 of 1997 on the file of the Motor Accident Claims Tribunal and Sub-Judge, Attur. He filed the said claim petition, claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident that took place on 20.10.1996.

3. On 20.10.1996 at about 11 a.m., the claimant and his friend Natarajan were standing near Kattukottai bus stop, a motor cycle belonging to first respondent came in a rash and negligent manner hit the claimant on his left thigh bone sustained fracture. The claimant was treated at Attur Government Hospital and later at Shanmuga Hospital Salem and underwent surgery. The petitioner was a driver in A.T.C and after the accident he was depromoted and given light work in the office. The petitioner filed claim petition claiming Rs.2 lakhs compensation.



5. When the matter came before the Tribunal the petitioner was examined as P.W.1 and one Dr.Ilangovan was examined as P.W.2. 13 documents were marked viz., Ex.P1 to P13. On the side of respondents 2 witnesses were examined and copy of insurance policy was marked as Ex.R1.

6.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the first respondent and directed the second respondent/Insurance company to a sum of Rs.55,000/- as compensation to the appellant.

7.Not being satisfied with the amounts awarded by the Tribunal under various heads, the appellant has come out with the present appeal seeking enhancement of compensation.

8.The learned counsel for the appellant contended that in the accident, the appellant sustained comminuted sub trochanteric fracture of left femur and left hip and left thigh bone and multiple injuries all over the body. P.W.2/Doctor assessed the disability of the appellant at 28%, but the Tribunal awarded only Rs.16,000/- which is very meagre and at least Rs.2,000/- is to be taken per percentage of disability. It is further contended that the appellant was a driver in ATC and due to the accident the length of the legs is reduced to 5 inches and he was given an ordinary job, thereby, his salary is very much reduced. It is further contended that no amount is awarded by the trial court under the head Future Medical Expenses and sought for enhancement of compensation.

9. Per contra the respondent counsel supported the award passed by the Tribunal. The Tribunal awarded a sum of Rs.10,000/- towards Loss of Income, for Pain and Suffering Rs.8,000/-, Rs.2000/- towards Transport Charges, Medical Expenses Rs.18,200/-, Rs.16,000/- towards Permanent Disability and Rs.800/- towards Extra Nourishment. The Tribunal has awarded a total sum of Rs.55,000/- towards compensation.The break-up details of the amount awarded by the Tribunal under various heads are as follows:

S.No .	Heads under which the amount is awarded by the Tribunal	Amount in Rs.
1	Loss of income	Rs.10,000/-
2	Pain and Suffering	Rs.8,000/-
3	Transport	Rs.2,000/-
4	Medical expenses	Rs.18,200/-
5	For permanent disability	Rs.16,000/-
6	Extra nourishment	Rs.8,00/-
	Total	Rs.55,000/-



10. The disability suffered by the appellant is fixed at 28%. The Tribunal awarded Rs.16,000/- for the same. Considering the nature of injury and disability, as to fair and reasonable compensation, the appellant is entitled to get Rs.1,500/- per percentage of disability which comes to Rs.42,000/- (Rs.1500x28=Rs.42,000/-).

11. Considering the nature of injury suffered by the petitioner, this Court is of the view to enhance the amount towards Pain and Suffering from Rs.8,000/- to 15,000/-, towards Transport Charges an amount of Rs.5,000/- is awarded and fees for Extra Nourishment, atleast Rs.5,000/- is to be awarded. The Tribunal has not awarded any amount towards Future Medical Expenses, Loss of Amenities and Attendant charges. This Court is of the view to award Rs.5,000/- each for the same respectively.

12. Thus, the award passed by the Tribunal, in comparison with the amounts now awarded by this Court is tabulated hereunder:

Sl.No	Head under which the amount is awarded	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court	Confirmed/enhanced
1	Loss of income	Rs.10,000/-	Rs.10,000/-	confirmed
2	Pain and Suffering	Rs.8,000/-	Rs.15,000/-	enhanced
3	Transport	Rs.2,000/-	Rs.5,000/-	enhanced
4	Medical expenses	Rs.18,200/-	Rs.18,200/-	confirmed
5	For permanent disability	Rs.16,000/-	Rs.42,000/-	enhanced
6	Extra nourishment	Rs.8,00/-	Rs.5,000/-	enhanced
7.	Future Medical expenses	--	Rs.5,000/-	Now granted
8.	Loss amenities	--	Rs.5,000/-	Now granted
9.	Attendant charges	--	Rs.5,000/-	Now granted
	Total	Rs.55,000/-	Rs.1,10,200/-	enhanced



13. In the result, this Civil Miscellaneous Appeal is partly allowed, enhancing the amount of compensation awarded by the Tribunal at Rs.55,000/- to Rs.1,10,200/- (Rupees One Lakh Ten Thousand and Two Hundred only), which shall carry interest at 9% per annum from the date of claim petition till the date of deposit. The second respondent insurance company is directed to deposit the total compensation awarded as determined by this Court in this Appeal, before the Tribunal, after adjusting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit, claimant is permitted to withdraw the amount as mentioned above. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mpa

To

- 1.The Motor Accident Claims Tribunal and Sub-Judge,
Attur.
2. The Section Officer
Vernacular Records Section
High Court, Madras.

+lcc to Mr.A.A.Venkatesan, Advocate SR.No. 23021
+lcc to Mr.S.Vadivel, Advocate SR.No. 22990

CMA. No. 1828 of 2014

PM

A.SK(22.09.2021)