



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.07.2021

CORAM

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A. No.2245 of 2014

S.V.Sriram

.. Appellant/Petitioner

Versus

1.The Managing Director,
KPN Travels India Limited,
No.20/1, Swamy Complex, A.V. Road,
Kalasipalayam, Bangalore 01.

2.The Branch Manager,
National Insurance Company Ltd., Branch No.1,
No.32, Promanadu Road, Cantonment,
Trichy 620 001.

3.A.Jaya

4.The Branch Manager,
New India Assurance Company Ltd.,
Vellore District.

.. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 31.08.2009 made in MCOP No.224 of 2005 on the file of the Motor Vehicle Claims Tribunal/Additional District Court, Krishnagiri.

For appellant	:	Mr.Mukund R.Pandiyan
For respondents	:	
for R2	:	Mr.S.Vadivel
for R4	:	Mr.S.Dhakshina Moorthy

J U D G M E N T

The appeal is heard through video conferencing.

2. Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal/Additional District Court, Krishnagiri, in MCOP No.224 of 2005, dated 31.08.2009, the present appeal has been filed by the claimant



for enhancement of the compensation amount.

3. It is the case of the appellant/claimant that on 23.06.2004, at about 6 am, he was travelling in the Bus bearing Registration No.KA-38A-0001 from Hosur to Chennai belonging to the first respondent and insured with the second respondent/Insurance Company. When the first respondent's Bus bearing Registration No.KA-38A-0001 was nearing Pennalur Power Grid, the driver of the said Bus drove it in a rash and negligent manner and hit against the third respondent's Lorry bearing Registration No.MDA 6069, which was coming from the opposite direction. Subsequently, another Bus bearing Registration No.TN-25-A-5127 came behind the first respondent's Bus bearing Registration No.KA-38A-0001 and hit the Bus. Due to the accident, the claimant sustained grievous injuries. He was given first aid treatment at G.S.Hospital, Chennai and then admitted in Apollo Hospital and a surgery was done on his right leg.

4. It is the further case of the claimant that he was working as Senior Engineer in Material Planning and Imports in Hindustan Motors at Hosur and drawing a salary of Rs.19,418/-. After the accident, he could not perform his duties with full efficiency. Hence, he made a claim for a sum of Rs.15,00,000/- as compensation.

5. The said claim petition was resisted by the second respondent/National Insurance Company by filing a counter statement denying the age, occupation and income of the claimant. It is their specific contention that the accident had occurred only due to the rash and negligent driving of the driver of the third respondent's Lorry bearing Registration No.MDA-6069. Further, the first respondent's Bus bearing Registration No.KA-38A-0001 was used against its permit and hence, the second respondent/National Insurance Company is not liable to pay compensation to the claimant indemnifying the owner of the said Bus. Thus, they sought for dismissal of the claim petition.

6. The fourth respondent/New India Assurance Company, which is the insurer of the Lorry bearing Registration No.MDA 6069, has filed a detailed counter statement and submitted that the driver of the first respondent's Bus bearing Registration No.KA-38A-0001 drove the Bus in a rash and negligent manner and hit against the third respondent Lorry and caused the accident. Hence, they sought for dismissal of the claim petition as against them.

7. In order to prove the claim on the side of the claimant, he examined himself as PW1, besides examining two other



witnesses as PW2 & 3 and marked Exs.P1 to P30. On the side of the Insurance Company, one D.Manivel was examined as RW1 and Exs.R1 & R2 were marked.

8. The Tribunal, after analysing the entire evidence, came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the first respondent's Bus bearing Registration No.KA-38A-0001. By coming to such conclusion, the Tribunal passed an award for a sum of Rs.1,40,000/- and directed the second respondent/National Insurance Company to pay the said amount. The amounts awarded by the Tribunal under various heads are as follows:

S.No.	Heads under which amounts are awarded by the Tribunal	Amount in Rs.
1.	Permanent Disability	90,000
2.	Transport Expenses	15,000
3.	Future Medical Expenses	25,000
4.	Loss of Articles and Clothes	5,000
5.	Extra Nourishment	5,000
	Total	1,40,000

9. Now, it is the contention of the learned counsel for the claimant that due to the accident, the claimant sustained grievous injury on his right thigh and hence, he could not even walk or stand for a long time. Therefore, he could not continue his job. In view of the same, the Tribunal ought to have adopted multiplier method, while calculating compensation under the head "permanent disability", instead of awarding a sum of Rs.2,000/- per percentage of disability for 45%.

10. The learned counsel for the claimant further contended that he was hospitalised for the period from 23.06.2004 to 05.07.2004 and after his discharge also, he took bed-rest for nearly 2 months. Hence, the Tribunal ought to have awarded amount under the head "Loss of Income", but the Tribunal failed to do so. He further submitted that the amounts awarded by the Tribunal under all the other heads are also not proper and the same needs enhancement.

11. Per contra, the learned counsel appearing for the second respondent/National Insurance Company and the fourth respondent/New India Assurance Company made their submissions supporting the award passed by the Tribunal.

12. Heard both sides and perused the materials available on record.



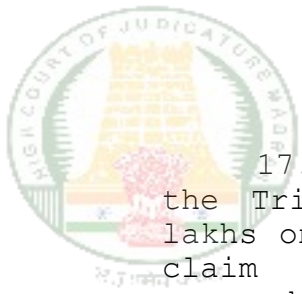
13. On account of the accident, the claimant sustained severe injury and hence, i) a surgery was performed on his right leg and ii) open reduction and DHS fixation over right hip with ligament reconstruction right hip joint, was done. PW2 Doctor assessed the claimant and fixed disability at 45%. This Court finds that the above injuries are not permanent and PW2 Doctor also assessed disability only at 45%, and therefore, the question of awarding amount under the head 'permanent disability' by applying multiplier method, does not arise. Hence, we are not inclined to consider the submission of the learned counsel for the appellant/claimant on this aspect of the matter.

14. However, the claimant could not attend his work for some time, and hence, this Court is of the view that it is just and proper to award a sum of Rs.30,000/- under the head "Loss of Income" as lump sum amount.

15. Since the claimant suffered severe injuries and admitted in hospital for a long time, it is just and proper to award a sum of Rs.5,000/- under each of the following heads, viz., "Attender Charges" and "Loss of Amenities". Similarly, another sum of Rs.20,000/- is awarded under the head "Pain and Sufferings".

16. The amounts awarded by the Tribunal under all the other heads are just and proper and hence, they are confirmed. Thus, the total compensation payable to the claimant is re-calculated as tabulated below:

S. No.	Heads under which amounts are awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1.	Permanent Disability	90,000	90,000
2.	Transport Expenses	15,000	15,000
3.	Future Medical Expenses	25,000	25,000
4.	Loss of Articles and Clothes	5,000	5,000
5.	Extra Nourishment	5,000	5,000
6.	Attender Charges	-	5,000
7.	Loss of Amenities	-	5,000
8.	Pain and Sufferings	-	20,000
9.	Loss of Income	-	30,000
	Total	1,40,000	2,00,000



17. Thus, the total compensation of Rs.1,40,000/- awarded by the Tribunal is hereby enhanced to Rs.2,00,000/- (Rupees two lakhs only), which shall carry interest at 7.5% from the date of claim petition till the date of payment. The second respondent/National Insurance Company is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting 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, the claimant is permitted to withdraw the entire amount. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation.

18. With the above observations and directions, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

pvs

To

1.The Additional District Court, Krishnagiri/
(The Motor Accident Claims Tribunal).

+1cc to Mr.Mukund R.Pandiyan, Advocate, S.R.No.32366

+1cc to Mr.S.Vadivel, Advocate, S.R.No.32274

C.M.A. No.2245 of 2014

SR(CO)

CB(12/10/2021)