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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.04.2021

Coram :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MRS. JUSTICE S.KANNAMMAL

Civil Miscellaneous Appeal No. 3923 of 2019

Ponnusamy

.. Appellant/Petitioner

Versus

1.D.Prakash

2.M/s.Bharati AXA General Insurance
Company Limited.

1st floor, Ferna Icon, Survey No.28,
Doddanekundi,
Bangalore, 560 037

.. Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of The Motor Vehicles Act, 1988 against the award and Decree dated 15.11.2018 made in M.C.O.P.No.577 of 2016 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.C.Thangaraju

For R1 : No appearance

For R2 : Mr.K.Poomalai

JUDGMENT

(Judgment of the Court was delivered by S.Kannammal, J)

Not being satisfied with the quantum of compensation awarded by the Tribunal, in and by Award dated 15.11.2018 passed in M.C.O.P.No.577 of 2016 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Namakkal, the present appeal has been filed by the claimant seeking enhancement of the compensation amount.



2. It is the case of the appellant/claimant before the Tribunal that on 20.03.2016 at about 6.40 p.m., when the claimant as a pillion rider travelling in Honda Activa bearing Reg.No.TN 54 L 2346 on the left side of the Road, on the way to his residence at Vellore, near Karur-Namakkal bypass road, a car bearing No. KA 50 N 7230 which was coming behind the two wheeler, was driven in a rash and negligent manner and dashed against the two wheeler. In that accident, the claimant sustained injury and he was admitted in Namakkal Akshaya Hospital for first aid. Thereafter he was shifted to Ganga Hospital, Coimbatore. A case has been registered against the car driver in Crime No.136 of 2016 under section 279, 338 IPC before Vellore police station. The car belongs to the first respondent and the same was insured with the second respondent. The claimant had filed the claim petition before the Tribunal claiming compensation of Rs.15,00,000/- for the injuries sustained by him.

3. The 2nd respondent herein/Insurance company has filed a counter statement disputing the manner of accident and the injuries sustained by the claimant. The insurance company has also disputed the occupation and income of the claimant. Further claimed that since two vehicles involved in the accident, the owner and insurer of the two wheeler are to be added as necessary parties and prayed for dismissal of the claim petition.

4. In order to prove the claim, on the side of the appellant/claimant, the petitioner was examined as P.W.1 and Exhibits P1 to P16 were marked. On the side of the Insurance Company neither oral nor documentary evidence was adduced.

5. After considering the entire materials available on record, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the offending vehicle Volkswokan car insured with the second respondent Insurance Company and owned by the first respondent herein. Hence the Tribunal had passed an award for a total sum of Rs.6,34,150/- with interest at 7.5 % per annum from the date of claim petition till the date of payment. The break up details of the award passed by the Tribunal are as follows:

(i)Transport Charges	: Rs. 10,000.00
(ii)For nutritious food	: Rs. 10,000.00
(iii)Medical expenses	: Rs.2,87,150.00
(iv)Pain and sufferings	: Rs. 50,000.00
(v)loss of future income	: Rs.2,52,000.00
(vi)towards medical assistant charges:	Rs. 25,000.00
Total	= Rs.6,34,150.00



the decision of Sarala Varma's case, the multiplier to be applied in the case on hand is 9. So, loss of income is calculated as under:-

$$8250 \times 12 \times 9 \times 70/100 = \text{Rs.}6,23,700.00$$

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13. The appellant/claimant's right leg had been amputated below knee and sustained right hand fracture. The Tribunal also pointed out that the appellant has been affected by the accident and there is total and permanent loss of earning capacity. The doctor who assessed the disability at 70%. Without help of one person, appellant cannot do any work. Definitely, the appellant would be getting serious mental agony. Therefore, it is appropriate to award Rs.25,000/- towards mental agony. In view of the amputation of right leg, there is serious of hardship expected in his day to day life, so artificial limb is absolutely necessary to lead his every day life. Therefore, towards artificial limb, Rs.1,00,000/- is awarded. Further, under other heads viz., towards extra nutrition, from Rs.10,000/- to Rs.25,000/- ; as per bill, towards transport expenses, from Rs.10,000/- to Rs.42,500/-, the award is enhanced.

14. Taking all these aspects into consideration, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of income $8250 \times 12 \times 9 \times 70/100$	2,52,000	6,23,700
2	Pain and suffering	50,000	50,000
3	Extra nutrition	10,000	25,000
4	Transport charges	10,000	42,500
5	Medical expenses	2,87,150	2,87,150
6	Future medical expenses		10,000
7	Attendant charges	25,000	25,000
8	Mental agony	---	25,000
9	Loss of expectation of life	---	25,000
10	Towards artificial limb	---	1,00,000
	Total	Rs.6,34,150	Rs. 12,13,350 rounded off to Rs.12,00,000



15. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

- (i) The award of the Tribunal is modified and enhanced from Rs.6,34,150.00 from Rs.12,00,000/-.
- (ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.
- (iii) In view of the above modified enhanced award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount with proportionate interest and costs, less the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this order.
- (iv) On such deposit, the appellant/claimant is permitted to withdraw the amount awarded as above, by filing proper application before the Tribunal, less the amount if any already withdrawn, with accrued interest. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.
- (v) In view of the order of this Court passed in C.M.P.No.18273 of 2019 in C.M.A.SR.No.79222 of 2019 dated 27.08.2019 the appellant shall pay the requisite Court-fee.

No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

mpa

To

1.The Motor Accident Claims Tribunal/Chief Judicial Magistrate,
Namakkal.

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



+2c to Mr.C.Thangaraju, Advocate SR.No.22107
+1cc to M/s.K.Poomalai , Advocate SR.No.22268

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RR(CO)
CB(24/11/2021)

CMA. No. 3923 of 2019