



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.3890 of 2019

Ruban @ Ruban Doss ... Appellant/Petitioner

Vs.

1.K.Nirmala
2.Reliance General Insurance Co. Ltd.,
Rai's Tower, 2nd Floor, Plot No.2054, 2nd Avenue
Anna Nagar, Chennai - 40. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree dated 21.01.2019 made in M.C.O.P.No.830 of 2014 on the file of the Motor Accident Claims Tribunal, (II Small Causes Court), Chennai.

For Appellant :Mr.K.Varadha Kamaraj

For Respondents :Mr.S.Arunkumar for R2

JUDGMENT

[Judgment of the Court was delivered by K.KALYANASUNDARAM,
J.]

This appeal arises out of the order passed by the Motor Accident Claims Tribunal, (II Small Causes Court), Chennai, in M.C.O.P.No.830 of 2014, dated 21.01.2019.

2.For the sake of convenience, parties are referred to as per their ranking in the claim petition.

3.The case of the claimant is that on 22.11.2013, at about 22.00 hours, he was riding the Motor Cycle bearing Registration No.TN 22 CV 6250 along Old Mahabalipuram road and when nearing Victoria Tower, the driver of the lorry bearing Registration No.TN 32 F 3469 came behind in a rash and negligent



manner and dashed against the motor cycle and in the said accident, he had sustained fracture of left leg resulting in amputation of left foot, and multiple injuries all over the body. Initially, he took treatment at Chettinad Hospital and thereafter, he was admitted in Rajiv Gandhi Government General Hospital, Chennai. Alleging that the accident had happened due to rash and negligent driving of the driver of the lorry, the claimant laid a claim petition before the Tribunal for compensation of Rs.40,00,000/-.

4. The appellant Insurance Company filed their counter disputing the manner of accident, age, avocation and income of the claimant and its liability to pay the compensation.

5. To substantiate the case, on the side of the claimants, P.Ws.1 and 2 were examined and Exs.P.1 to 10 were marked. On the side of the respondents, neither the witness nor the evidence was adduced.

6.The Tribunal, after considering the oral and documentary evidence held that the driver of the 1st respondent lorry was responsible for the accident and awarded compensation of Rs.5,50,000/- to the claimant. Being dissatisfied with the quantum, the claimant has preferred the present appeal.

7.The learned counsel for the appellant/claimant would contend that since the amount awarded by the Tribunal is meager in all the heads, the claimant is entitled for higher compensation. He would further contend that at the time of accident, the claimant was 36 years old and hale and healthy. He was the sole breadwinner of his family. He would further contend that the claimant was working as Painter and earning Rs.600/- per day, whereas, the Tribunal has not granted any amount under the head of 'Loss of earning capacity' and also failed to consider the future prospects of the claimant as per the guidelines of the Hon'ble Apex Court. He would further submit that the witness, P.W.2-Dr.M.S.Saravana Bavanatham, spoke about the injuries sustained by the claimant and the disability caused because of the said accident. Though the claimant has produced Exs.P.2 to 4, to show that he had taken treatment at various hospitals at various point of time, the Tribunal granted a meager sum of Rs.65,000/- under the head of medical expenses, which needs proper appreciation. Hence, the appellant/claimant seeks for enhancement of compensation under other heads also.

8.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company submitted that the impugned



३.३ : प्रयोग ५२०

10. From the perusal of records, it is seen that the claimant was a painter by profession. On account of the injuries sustained by him in the accident, left leg mid foot amputation was done. Furthermore, he sustained fracture and degloving injury in the left leg. After analysing the evidence available on record, the Tribunal at Paragraph 10 of the order observed as follows:

<https://hcservices.ecourts.gov.in/hcservices/>



11. It is relevant to note that this is a fit case to apply multiplier method to determine the loss of earning capacity. But the Tribunal has awarded a total sum of Rs.5,50,000/- for the injuries sustained by the claimant. It is the case of the claimant that he was earning Rs.600/- per day, but it is not supported by any evidence. Therefore, we fix the notional monthly income of the claimant as Rs.10,000/- and add Rs.4,000/- towards future prospects and if so, the actual monthly income would be Rs.14,000/-. Considering the fact that the claimant sustained 50% disability, this Court awards Rs.12,60,000/- $[14,000 \times 12 \times 15 \times 50/100]$ towards Loss of Earning Capacity.

12. Further, this Court awards Rs.50,000/- under the head Attender Charges and enhances the Transportation Charges to Rs.25,000/- from Rs.15,000/-. In addition to that, the amounts awarded by the Tribunal under the heads, viz., Rs.1,00,000/- towards Pain and Sufferings; Rs.50,000/- towards Loss of Amenities; Rs.20,000/- towards Extra Nourishment; Rs.65,000/- towards Medical Expenses; and Rs.50,000/- towards Future Medical Expenses, are confirmed. In total, the claimant is entitled to Rs.16,20,000/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.

13. Thus, the total compensation payable to the appellant/claimant is re-calculated and tabulated below:

S.No.	Heads under which amounts are awarded	Amount in Rs.	Amount in Rs.
1.	Disability	2,50,000/-	-
2.	Pain and sufferings	1,00,000/-	1,00,000/-
3.	Loss of Amenities	50,000/-	50,000/-
4.	Transportation Charges	15,000/-	25,000/-
5.	Extra Nourishment	20,000/-	20,000/-
6.	Medical Expenses	65,000/-	65,000/-
7.	Future Medical Expenses	50,000/-	50,000/-
8.	Attender charges	-	50,000/-
9.	Loss of Earning Capacity	-	12,60,000/-
	Total	5,50,000/-	16,20,000/-



14. In the result, the Civil Miscellaneous Appeal is partly allowed. The 2nd respondent/Insurance Company is directed to deposit the modified award amount of Rs.16,20,000/- with accrued 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. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

Jer
To

The Motor Accident Claims Tribunal,
(II Small Causes Court), Chennai.

+1cc to Mr.K.Varadha Kamaraj, Advocate Sr.63118

C.M.A.No.3890 of 2019

nk[co]
srg 17/02/2022