



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	23.02.2021
Date of Judgment	08.06.2021

WEB COPY

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD) No.289 of 2013

Deivendiran : Appellant/Petitioner

Vs.

1.Kamaleswari

2.The United India Insurance Company Ltd.,
Rep. by its Branch Manager,
Opp. To T.V.S Building,
Railway Station, Madurai. : Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award, dated 10.11.2004 made in MCOP No.30 of 2001 on the file of the Motor Accident Claims Tribunal (Sub Court), Sivagangai.

For Appellant : Mr.S.Srinivasa Raghavan

For 1st Respondent : Died, vide Court order,
Dated 10.04.2019

For 2nd Respondent : Mr.R.Mahalingam
(No appearance)

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the award, dated 10.11.2004 made in MCOP No.30 of 2001 on the file of the Motor Accident Claims Tribunal (Sub Court), Sivagangai.

2.The short facts of the case is that on 17.02.2000 at about 5.45 am, on Madurai-Rameshwaran Highways Road in front of Cacord Spinning Mill near Manalur, the claimant along with some other load men were travelling in the lorry TN-63-B-2449 and at that time, the lorry TN-59-A-5316 came in a rash and negligent manner



and hit against the Lorry, in which the claimant and other load-men were travelling. In that accident, the petitioner sustained grievous bleeding injuries and fracture on his right ankle, while other load-men sustained bleeding injuries. Immediately, the claimant was taken to Madurai General Hospital, where he was admitted as an inpatient for a week. The injured claimant filed a claim petition seeking compensation of Rs.1,50,000/- on the ground that he sustained injuries on the alleged accident.

3.The claim was opposed by the 2nd respondent Insurance Company disputing the manner of the accident and their liability to pay the compensation.

4.Before the Tribunal, the claimant examined himself as PW1 and examined one another witness as PW2 and marked Exs.P1 to P7 in support of his case. On the side of the 2nd respondent Insurance Company, no witness was examined and no document was marked.

5.The Tribunal, after careful consideration of the evidence available on record, has awarded compensation of Rs.25,000/- with interest at the rate of 9% p.a. Being not satisfied with the award of compensation, the present appeal has been filed by the claimant for enhancement of compensation.

6.Heard the learned counsel appearing for the parties and perused the materials available on record.

7.PW1 is the injured as well as the eye witness to the accident. A criminal case was registered against the driver of the offending vehicle. Ex.P1 FIR stands registered based on the complaint given by PW1. PW1 has given evidence stating that he sustained bleeding injuries and fracture on his right ankle. Ex.P6 is the Disability Certificate. Ex.P7 is the X-ray. PW2 Dr.Ganesan deposed that in the alleged accident, the claimant had sustained partial permanent disability and issued Ex.P6 Disability Certificate. However, based on the evidence, the Tribunal has come to the conclusion that the claimant has suffered 20% partial permanent disability and awarded **Rs.15,000/-** towards the head. Further, the Tribunal awarded Rs.5,000/- towards pain and sufferings and Rs.5,000/- for extra nutrition, transportation and other expenses. In total, the tribunal has awarded **Rs25,000/-** together with interest @ 9.% p.a.

8.It is not in dispute that the claimant had sustained grievous injuries in the alleged accident that took place on 17.02.2000. Perusal of the evidence of PW2/Doctor, the claimant had sustained multiple fracture injuries and he assessed disability at 20%. But the tribunal has not awarded only 15,000/-



9.It is to be noted here that in this case, the Doctor has assessed the disability of the claimant as 20%. As per the judgment reported in **2013(2) TAN MAC 583 (National Insurance Company Limited Vs. G.Ramesh)**, for 1% of disability, the claimant is entitled to Rs.3,000/-. Hence, it is held that the claimant is only entitled Rs.60,000/- for 20% disability at the rate of 3,000/- for 1%. Further, the tribunal has not awarded any amount towards loss of income during treatment period for three months. Hence, this court has awarded Rs.9,000/- towards temporary loss of income for the treatment period. Insofar as the other heads, the award of the tribunal is to be enhanced to some extent. Accordingly, the compensation awarded by the tribunal is recalculated as follows:-

Head	Award of the Tribunal	Award of this court
Disability for 20% (Rs.3,000/- x 20%)	15,000/-	60,000/-
Pain and suffering	5,000/-	15,000/-
Extra nourishment etc	5,000/-	3,000
Loss of income for the treatment period	-	9,000/-
Transport to Hospital	-	3,000/-
Total	25,000/-	90,000/-

10.In the result, the Civil Miscellaneous Appeal is **partly allowed** and the award of the tribunal is enhanced to Rs.90,000/- from **Rs.25,000/-**. The interest awarded by the tribunal is reduced to 7.5% per annum. The 2nd Respondent Insurance Company is directed to deposit the modified award amount together with accrued interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, the appellant/claimant is permitted to withdraw the modified amount, less the amount already withdrawn without filing any formal petition before the tribunal. The claimant shall pay the additional court fee for the enhanced amount. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



er

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Subordinate Judge,
Motor Accident Claims Tribunal/
Sub Court, Sivagangai.
- 2.The Branch Manager,
United India Insurance Company Ltd.,
Opp. To T.V.S Building,
Railway Station, Madurai.

copy to

The Section Officer-2 copies
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.S.SRINIVASA RAGHAVAN, Advocate (SR-19081[F] dated 09/06/2021)

Judgment made in
CMA (MD) No.289 of 2013
08.06.2021

KM(07.07.2021) 4P 6C