



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD)No.649 of 2021

B.Balakrishnan

...Appellant/Petitioner

Vs.

1.A.P.Bharat Kumar

2.IFFCO Tokio General Insurance Company Limited,
through its Divisional Manager,
83, Preetham Plaza,
Chandragandhi Nagar, Ponmeni,
Madurai.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to modify the award amount passed in M.C.O.P.No.161 of 2014, dated 15.11.2019 on the file of Sub Court/Motor Accidents Claims Tribunal, Virudhunagar and enhance the compensation amount to the tune of Rs.19,93,998/- (Rupees Nineteen lakhs Ninety Three thousand Nine hundred and ninety eight only) by ordering the claimant as permanent disability person having 100% disability and treating his monthly pay of Rs.20,000/- etc., towards the insurance claim against accident met by the petitioner on 07.09.2021.

For Appellant : Mr.K.K.Samy

For R1 : No Appearance

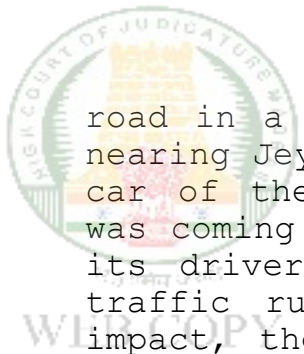
For R2 : Mr.V.Sakthivel

JUDGMENT

The appellant is the claimant in M.C.O.P.No.161 of 2014 on the file of the Motor Accidents Claims Tribunal/Subordinate Judge, Virudhunagar. He filed the claim petition under Sections 140 and 166 of the Motor Vehicles Act and Rule 3(1) of the M.V.Act, seeking compensation of Rs.11,00,000/- for the injuries sustained by him in a road accident on 07.09.2014.

2. The case of the claimant in nutshell is as follows:

On 07.09.2014 at about 3.50 p.m. the petitioner was riding the two wheeler, bearing Registration No.TN-58-B-5916, from North to South from Kunnoor to Rajapalayam on Srivilliputhur - Madurai main



road in a normal speed observing the traffic rules. When, he was nearing Jeyam Hotel, which is situated opposite to VPPM College, the car of the first respondent bearing Registration No.TN-37-BM-7700 was coming in the opposite direction and the said car was driven by its driver in a rash and negligent manner without observing the traffic rules had dashed against the two wheeler. Due to the impact, the petitioner has sustained fractures on his right hand, right leg and right hip and cut injury on right foot and injuries all over his body. Immediately he was taken to Government Hospital, Srivilliputhur. Since the injuries are grievous in nature, he was referred to Government Rajaj Hospital, Madurai. But he was admitted in Sakthibala Hospital, Rajapalayam. He underwent operations on right hand, right hip, right leg and right foot in that hospital and inserted steel plates in the right hand, right leg and right hip, still he is taking treatment in the hospital.

3.The claimant has filed the claim petition in M.C.O.P.No.161 of 2014 on the file of the Motor Accidents Claims Tribunal/Subordinate Judge, Virudhunagar, seeking compensation of Rs.11,00,000/-.

4.Before the Tribunal, on the side of the claimant one witness was examined as P.W.1 and fifteen documents were marked as Exs.P.1 to P.15. On the side of the respondents herein, one witness was examined as R.W.1 and no document was marked and one Court document was marked as Ex.C1.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimant and the respondents and also on appreciating the evidences on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the Car and directed the second respondent to pay a sum of Rs.5,40,163/- as compensation. Aggrieved over the orders passed by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6.The learned counsel for the appellant contended that the claimant underwent operations on right hand, right hip, right leg and right foot and steel plates were also inserted. Still he is in treatment in the hospital and his two wheeler also purely damaged at that time of accident. The claimant was aged about 31 years and was working as a driver and earning Rs.28,500/- as salary per month. Due to grievous injuries all over the body, he cannot stand, move and walk so, he could not attend his work and lost his job. But the Tribunal has fixed 70% of disability and awarded a sum of Rs.2,10,000/- towards "permanent disability" and no amounts were awarded towards "loss of income". He therefore prayed for enhancement of compensation.

7.*Per contra*, The learned counsel appearing for the second respondent contended that the Tokio Insurance Company Limited contended that the



appellant renewal the heavy vehicle license after the accident i.e. in the year 2019. Since he can drive all the vehicle and he is attending his work, the award passed by the Tribunal is just and reasonable and therefore, the same need not be disturbed at this stage.

8.Heard Mr.K.K.Samy, learned counsel appearing for the appellant/claimant and Mr.D.Sivaraman, learned counsel appearing for the second respondent and perused the material documents available on record. No appearance on behalf of the first respondent.

9.Today the appellant is present before this Court. This Court is of the view that the claimant cannot walk and move properly without attendant. Further, it is submitted that a steel plate was fixed. Hence, 100% functional disability is now fixed as 100% as argued by the appellant. But the Tribunal awarded Rs.20,000/- towards pain and sufferings. Since the functional disability is 100%, multiplier method has to be adopted. A perusal of the records shows that the claimant was working as a driver, who was earning Rs.28,500/-as salary per month. Eventhough salary certificate marked as Ex.P12, the employer of the petitioner has not been examined and the income tax particulars of the petitioner has not been produced. Since the claimant was working as a heavy vehicle driver in a private concern, this Court fixed a sum of Rs.15,000/- as his notional monthly income. Even in case of injuries, when multiplier method is adopted, 1/3rd has to be deducted from the notional income. The age of the appellant is 31 years and the correct multiplier applicable is '17'. By deducting 1/3rd and applying multiplier '17', the loss of income arrived at Rs.2,04,000/- (Rs.10,000/- x 12 x 17) . It is seen from the records that since the claimant had sustained multiple injuries all over the body, the Tribunal has awarded only Rs.20,000/- towards pain and sufferings and the same is increased to Rs.50,000/-. This Court also awarded Rs.10,000/- for attendant charges. The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this Court
1.	Loss of income	Rs.2,04,000/-
2.	Medical bills	Rs.2,45,969/-
4.	Pain and sufferings	Rs. 50,000/-
5.	Extra nourishment	Rs. 15,000/-
6.	Transportation charges	Rs. 21,194/-
7.	Damage to clothing	Rs. 1,000/-
9.	Attendant Charge	Rs. 10,000/-
Total		Rs.5,47,163/-



10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.5,40,163/- to Rs.5,47,163/- which would carry interest at the rate of 7.5% per annum.

(iii) The second respondent/IFFCO Tokio General Insurance Company Limited, is directed to deposit the enhanced compensation amount i.e., Rs.5,47,163/-, less the amount already deposited, if any, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of M.C.O.P.No.161 of 2014, dated 15.11.2019 on the file of Motor Accidents Claims Tribunal/Sub Court, Virudhunagar, within a period of six weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the appellant / claimant is entitled to to withdraw the same by filing necessary application before the Tribunal.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsd

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 Motor Accidents Claims Tribunal/Subordinate Judge,
Virudhunagar.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.K.K.SAMY, Advocate (SR-38205[F] dated 10/12/2021)

+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-38241[F] dated 10/12/2021)

C.M.A. (MD) No.649 of 2021
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RD(24.02.2022) 4P 6C