



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA.No.1768 of 2017

V.L.Balakrishnan

... Appellant/ Petitioner

Vs.

M.Yuvaraj

Since died represented by Legal heir R3.

1. United India Insurance Co. Ltd.,
Motor Third Party Hubb,
Silinghi Buildings,
134, Greams Road,
Chennai - 600 006.

2.E.Murali

... Respondents / Respondents 2,3

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 09/01/2017 made in MACT.O.P.No.4835 of 2013, on the file of the III Small Causes Court of (Motor Accidents Claims Tribunal) Chennai.

For Appellant : Mr.N.M.Muthurajan

For R1 : Mr.R.Rathna Thara

J U D G M E N T

The appellant was the claimant in MACTOP No.4835 of 2013 which was on the file of the III Court of Small Causes / Motor Accidents Claims Tribunal, Chennai. Aggrieved with the quantum of compensation granted, the claimant had preferred the present appeal. A perusal of the records reveals the facts which necessitated the filing of the claim petition before the Tribunal.

2.The claimant / appellant on 01.02.2013 at around 10.30 hours in the morning was travelling as a pillion rider in a motor cycle bearing Registration No.TN-10-AH-8347. The 1st respondent before the Tribunal was the driver of the motor cycle. The motor cycle was proceeding from Ambattur to Maraimalai Nagar by the Tambaram Maduravoyal bypass road. At that time, the 1st respondent was said to be driving the motor



cycle in a rash and negligent manner and lost the control and dashed on the left side median, owing to which the claimant / appellant as a pillion rider fell down and sustained injuries.

3.The case of the claimant / appellant was that the accident was solely due to the rash and negligent driving of the 1st respondent. During the pendency of the petition before the Trial Court he died and his legal heirs had been brought on record. At any rate, that fact submerges owing to the presence of the 2nd respondent / Insurance company.

With respect to the point which was framed for consideration whether the accident was due to the rash and negligent driving of the deceased 1st respondent. The Tribunal affirmed that particular fact and I am not interfering with that particular finding of the Tribunal.

4.By judgment dated 09.04.2017, the Tribunal had granted a total compensation of Rs.4,51,887/- and rounded it off to Rs.4,51,900/-. The compensation breakup was as follows:

Heads	Amounts
Pecuniary Loss	
Attender charges	Rs.4,250/-
Transport to Hospital	Rs.10,000/-
Extra nourishment	Rs.15,000/-
Damage to clothing	Rs.1,000/-
Medical expenses	Rs.2,31,637/-
Non Pecuniary Loss	
Pain and suffering	Rs.40,000/-
Damages for Mental and physical shock	Rs.10,000/-
Loss of amenities	Rs.15,000/-
Disfigurement	Rs.10,000/-
Disability 40% @ Rs.3,000/-	Rs.1,20,000/-
Total	Rs.4,56,887.00

5.It is to be noted that in the Tribunal's judgment, in the discussion portion, for loss of amenities, the Tribunal had granted a sum of Rs.25,000/-, but in the final calculation showing compensation under various heads, it is mentioned as Rs.15,000/-. Likewise, there is also an error in calculating the total amount of compensation. The Tribunal stated the total amount as Rs.4,51,887/-. Now, by verifying the same, the total



award amount granted by the Tribunal comes to Rs.4,66,887/-.

6. With respect to the quantum granted, learned counsel for the appellant had largely gone along with the compensation granted under various heads, but raised one particular issue, namely that the appellant admittedly did not attend office from 01.02.2013 and 31.03.2013 which is evidenced by Ex.P12 salary certificate and therefore, the learned counsel claimed that he should be compensated for the loss of income owing to the non-attending of the office for the period of two months. It is claimed that one month salary was Rs.24,000/- and that an additional Rs.48,000/- should be granted to that particular head.

7. A perusal of the reasoning as to why the Tribunal did not grant that particular head, in spite of Ex.P12 reveals that in paragraph 25, the Tribunal had also examined Ex.P13, leave certificate and observed that as a permanent employee, the claimant was entitled for salary and did not find any possible reason why salary could have been denied to him, particularly since the leave was on account of the injuries suffered. That can be stated as a presumption drawn by the Tribunal. At the same time, that he was not paid salary during those two months is also a presumption that could be drawn.

8. But let me balance the facts and according to the exhibit, which only says that the appellant did not attend the office from 01.02.2013 to 31.03.2013 due to the injury suffered in the accident, let me not draw any further conclusion over the said document and I would grant two months salary for the appellant herein owing to loss of income and that would indicate a sum of Rs.48,000/- has to be added to the compensation already granted.

9. Learned counsel also made a representation regarding attender charges, and that even after hospitalization, at home, the appellant was in need of an attender to assist him and therefore, attender charges should also be increased. But however no such records are available and it may not be proper on the part of this Court to presume that the family members would not have come to the assistance of the appellant and he would have been left to the care of a third party attender.

10. The third aspect which was raised by the learned counsel for the appellant was with respect to the future medical expenses. The learned counsel for the 2nd respondent stated that if medical expenses had actually been incurred post operation or post hospitalization, those medical bills should have been produced as documents before the Tribunal, and if they had been produced, the Tribunal would have considered them in the proper light. Since there are no bills for the same, this Court also cannot grant any amount towards medical expenses owing to the



injuries and post hospitalization and post treatment.

11.The Tribunal had awarded a total compensation of Rs.4,51,900/- which actually is Rs.4,66,887/- on re-totalling. Now, let me increase a sum of Rs.48,000/- (two month salary) towards loss of income to the appellant.

12.The Civil Miscellaneous Appeal is partly allowed to that extent enhancing the compensation which had been determined as Rs.4,66,887/- to Rs.5,14,887/-. The Insurance company shall deposit the difference in compensation amount i.e., Rs.48,000/- with interest of 7.5% from the date of filing of the petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the same. No order as to costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

smv

To:-

The Motor Accidents Claims Tribunal Chennai / III Court of Small Causes, Chennai.

Copy to

The Section Officer,
V.R.Section, Madras High Court,
Chennai.

+1cc to Mr.R.Rathna Thara, Advocate, S.R.No.13006

+1cc to Mr.N.M.Muthurajan, Advocate, S.R.No.12527

CMA.No.1768 of 2017

SR-II(CO)

CT 26/04/2022