



C.M.A.(MD)No.1069 of 2007

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:15.02.2023

CORAM:

THE HONOURABLE DR JUSTICE G.JAYACHANDRAN

C.M.A.(MD)No.1069 of 2007

Thangamariappan

.. Petitioner / Petitioner

Vs.

1. Karuppasamy Raju

.. 1st Respondent / 1st Respondent

2.The United India Insurance Company,
Kovilpatti Branch Main Road,
through its Branch Manager.

.. 2nd Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 10.06.2005 made in M.C.O.P.No.81 of 2002 on the file of the Motor Accidents Claims Tribunal/Subordinate Judge, Kovilpatti.

For Appellant

: Mr.G.Pradeep

for Mr.S.Muthumalairaja



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For Respondents : Mr.J.S.Murali
for R2
: No appearance for R1

JUDGMENT

DR.G.JAYACHANDRAN, J.

This appeal is filed by the claimant, who was not satisfied with the quantum of compensation awarded to him for the partial permanent disability incurred by him in the road accident occurred on 08.07.2001. The claimant was 20 years old at the time of accident. He while travelling along with his friend Venkatesh to the Hospital by auto bearing Registration No.TN 59 A 9299 from Veeravanji Nagar towards the Government Hospital, the auto was hit by a Tractor bearing Registration No.TN 69 Y 3512 nearby Shenbaga STD Booth on the Kathiresan Kovil Road. The accident occurred due to the negligence of the driver of the Tractor insured under the United India Insurance Company, Kovilpatti Branch. The claimant, who sustained severe injury in the accident was taken to Kovilpatti Government Hospital and thereafter shifted to Tirunelveli Medical College Hospital and surgery was conducted for pelvis ampression discharge and ICD tube was fixed for urine. He was treated



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inpatient for nearly more than one month and got discharged on 11.08.2001.

His vital organs were severely damaged and the part of his liver damaged in the accident was removed. The doctor has assessed 70% partial permanent disability. Due to the injury he was not able to carry on his avocation as a driver and thereby has lost income.

2. A sum of Rs.6,00,000/- was claimed as compensation. The claim was contested by the Insurance Company on the ground that the driver of the auto had no valid driving license at the time of accident and the owner of the Tractor who insured his vehicle with the Insurance Company has violated the policy condition and therefore, the Insurance Company is not liable to indemnify the Tractor owner. Further, the auto driver was to be blamed for his rash and negligent driving causing the accident.

3. To prove his case, the claimant examined himself and one Dr.Ramaguru as witnesses. 11 exhibits were marked. Though the claim was refuted by the Insurance Company, no oral or documentary evidence adduced by them.



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4. The Tribunal, after considering the evidence placed before it, awarded compensation of Rs.1,13,000/- with 9% interest from the date of petition till the date of realisation, under the following Heads:

SL. No.	Heads	Award Amount Rs.
1.	For Transport	1,000/-
2.	For Nourishment	10,000/-
3.	For Damage of Cloth	2,000/-
4.	For Pain and Suffering	25,000/-
5.	For permanent disability	50,000/-
6.	Loss of Income	25,000/-
	Total	1,13,000/-

5. The claimant in this appeal for enhancement of compensation, has stated that the Tribunal has failed to consider the nature of disability caused to the claimant. The award of Rs.50,000/- for 70% disability is meagre and ought to be enhanced. Though evidence been placed before the Tribunal that the claimant was treated as inpatient for more than one month, no compensation awarded towards Medical Expenses incurred till the date of claim petition and for the expected future medical expenses.



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6. The learned counsel for the appellant/claimant submitted that till date the claimant is taking treatment for injury sustained in the accident and he has to continue the treatment till his life time because of damage to the urinary track. He also submitted that the accident has reduced the claimant's quality of life which not been taken note by the Tribunal.

7. The learned counsel for the Insurance Company submitted that the claimant has not proved his income or loss of income due to the accident. Though the Doctor vide Ex.P11 has given a disability certificate that the claimant suffers 70% partial permanent disability, it is not in consonance with the guidance issued by the Medical Council of India and therefore, the Court has rightly fixed compensation for the disability at Rs.50,000/-. He however, fairly conceded that if 70% disability is accepted, then during the relevant point of time, the Tribunal used to award Rs.1000/- per percentage of disability and in this case, the claimant, at the most, is entitled for compensation enhanced by Rs.20,000/-.

8. This Court, on considering the rival submissions, finds that at the time of accident, the claimant was 23 years old. Though he claims that he was



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driver by profession, no document produced to show his gainful employment, so only notional income can be fixed for the period he was unable to take up employment. The trial Court, taking note of this fact, has awarded Rs.25,000/- towards loss of income.

9. This Court is duty bound to take note of the disability of the claimant as found in Ex.P11 to arrive a proper compensation for the accident victim. The Doctor, who was examined the claimant has certified that the claimant suffers fracture of Pelvic bone (right side). The urinary bladder and urinary passage damaged. Urine is excreted through a tube. He has undergone a abdominal surgery to remove the part of the damaged liver. There is evidence to show that the claimant was taking treatment as inpatient in Tirunelveli Government Medical College Hospital for more than a month. For the said reason, this Court is of the view that the award of Rs.1,13,000/- granted by the Tribunal is bound to be enhanced. Accordingly, the award is enhanced as below:

SL. No.	Heads	Award Amount Rs.
1.	Transport	1,000/-
2.	Nourishment	10,000/-
3.	Medical Expenses	25000/-



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4.	Damage of Cloth	2,000/-
5.	Pain and Suffering	25,000/-
6..	For permanent disability	70,000/-
7.	Loss of Income	25,000/-
8.	Loss of Amenities	1,00,000/-
	Total	2,58,000/-

9. The Insurance Company is directed to deposit the enhanced award amount of Rs.2,58,000/- with 9% interest from the date of claim petition till the date of realisation to the credit of M.C.O.P.No.81 of 2002 dated 10.06.2005 on the file of the Motor Accidents Claims Tribunal/Subordinate Judge, Kovilpatti, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same with accrued interest and costs by filing proper application before the Tribunal.

10. Accordingly, this Civil Miscellaneous Appeal is partly allowed.

No Costs.

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Index : Yes/No
Internet : Yes
NCC: Yes/No
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DR.G.JAYACHANDRAN, J.

PJL

To
The Sub Judge,
Motor Accidents Claims Tribunal,
Kovilpatti.

**Judgment made in
C.M.A(MD)No.1069 of 2007**

15.02.2023