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CMA NO. 1084 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-11-2024

CORAM

THE HONOURABLE MR JUSTICE M.DHANDAPANI

CMA. No. 1084 of 2019

E.Shiyamkumar

Vs

.... Appellant

1.B.Balaji

2.P.Sivasubramaniam

3.IFFCO TOKKIO General Insurance Co., Ltd.,

Thulsi Chambers, III Floor,

T.V.Samy Road, West R.S.Puram

Coimbatore 641002.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the fair and decretal order dated 29.04.2010 passed in MCOP.No.648 of 2008 on the file of the Motor Accidents Claims Tribunal (I Addl. District Court), Erode.

For Appellant(s) : Mr.A.A.Venkatesan

For Respondent(s): Mr. J. Michael Visuvasam
for R3
R1 & R2- No appearance



JUDGMENT

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This Civil Miscellaneous Appeal has been filed against the fair and decreetal order dated 29.04.2010 passed in MCOP.No.648 of 2008 on the file of the Motor Accidents Claims Tribunal (I Addl. District Court), Erode.

2. The facts of the case leading to filing of this Civil Miscellaneous Appeal is as follows:

(i) On 12.08.2005 at about 10.30 p.m., when the appellant was walking on the northern side of east-west Agathiyar Street at Teachers' Colony, Erode, a motor cycle bearing Regn.No.TN-33-C-4992, driven by its driver in a rash and negligent manner, dashed against the appellant, due to which, the appellant sustained grievous injuries in his neck, legs and hands. Immediately he was admitted in Sri Harini Hospital, Erode and shifted to CMC, Vellore, wherein he went surgeries. He sustained fracture in C5 in his spine and is taking physiotherapy treatment.

(ii) At the time of the accident, the appellant was 24 years and was doing driving job, through which, he was earning Rs.10,000/- per month.



(iii) Since the accident was occurred due to the rash and negligent driving of the driver of the motor cycle, he filed a claim petition before the I Addl. District Judge of Erode District at Erode against the driver, owner and insurer of the two wheeler, who are the respondents 1 to 3 herein respectively claiming compensation of Rs.30,00,000/-.

(iv) Before the tribunal, on the side of the claimant, witnesses PW1 and PW3 were examined and documents Ex.P.1 to Ex.P.32 were marked as exhibits. On the side of the respondents, no witness was examined and no document was marked.

(vi) The claim petition was resisted by the 3rd respondent /Insurance company by way of filing counter.

(vii) The tribunal, on appreciating the oral and documentary evidence, awarded a compensation of Rs.10,87,062/- along with interest at the rate of 7.5% per annum from the date of petition till the date of realisation with proportionate costs. The amount of compensation awarded by the tribunal under various conventional heads are tabulated as follows:-



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<i>S.No.</i>	<i>Conventional Heads</i>	<i>Compensation Awarded</i>
1	Loss of income (3450 x 12x16x100)	Rs.6,62,400/-
2	Pain and sufferings	Rs.1,00,000/-
3	Future medical expenses and attendant charges	Rs.1,00,000/-
4	Transportation charges	Rs. 15,000/-
5	Physiotherapy charges	Rs. 40,000/-
6	Medical Bills	Rs. 17,305/-
7	Bills for purchase of medicine	Rs. 5,644/-
8	Medical bill issued by CMC,Vellore	Rs. 44,486
9	Bill of Sri Harini Hospital,Erode	Rs. 8,000/-
10	Bill of Kumarasamy Hospital	Rs. 3,300/-
11	Bill of igraa International Hospital, Calicut	Rs. 315/-
12	Medical Bills under Ex.A21	Rs. 12,351/-
13	Medical Bills under Ex.A.22	Rs. 23,774/-
14	Medical Bills under Ex.A.23	Rs. 29,487
15	Bill of Life Line Multi Speciality Hospital, Chennai	Rs. 25,000/-
	Total	Rs. 10,87,062/-

3. Aggrieved against the compensation awarded by the tribunal, the present Civil Miscellaneous Appeal has been preferred by the claimant/appellant herein.



4. Learned counsel for the appellant submitted that due to the accident, the appellant suffered injuries all over the body, particularly, he sustained fracture on C.5 and C.6, on account of which, the functions of four limbs become stopped and for the same, he took treatment in various hospitals. From the X-Ray, it is seen that C.4, C.5 and C.6 are united wrongly and therefore, he has no sense even during passing urine and motion, thereby, the Doctor assessed the disability suffered by him at 100% also gave Ex.A.30 Disability Certificate. It is his further submission that since the appellant sustained 100% disability, he is not able to move and do his regular works and considering the above, the tribunal ought to have awarded more compensation for leading his remaining life.

5. He further submitted that the appellant has lost his life at the age of 24 years and could not be able to recover and he has to depend only upon his parents till their life time. The tribunal erroneously fixed the transportation charges only on the ground that the author of Ex.P.18 to 26 were not examined. The tribunal has fixed lesser amount for the amounts spent for physiotherapy. The tribunal has fixed a meagre amount as monthly income at Rs.3,450/- and ought not to have deducted 1/4th towards



his personal expenses. Further, the tribunal, considering the fact that the appellant was in hospital as in-patient for nearly 6 months, ought to have awarded more compensation for pain and sufferings, medical bills and attendant charges. The tribunal failed to award any compensation under the head damages and extra nourishment. Further, it is argued by the learned counsel for the appellant that the tribunal has awarded only lesser amount towards medical bills, though the amounts covered under the medical bills comes to Rs.3,30,382/-. Thus, he prayed for enhancing the compensation awarded by the tribunal.

6. Per contra, the learned counsel for the respondent submitted that the amount awarded by the tribunal is just and fair and hence there is no need to interfere with the compensation awarded by the tribunal. Thus, he prayed for dismissal of this Civil Miscellaneous Appeal.

7. Head both sides.

8. Admittedly, the appeal was filed for enhancement of compensation, There is no need for discussion with regard to negligence aspect. In respect of quantum of compensation, the tribunal fixed the



monthly income of the appellant per day as Rs.200/- and after deducting a sum of Rs.50/- for his personal expenses, it fixed the income of the appellant per day as Rs.150/-. It has calculated the income for the appellant only for 23 days and not for 30 days. Further, at the time of accident, the age of the appellant is 24 years, but the tribunal, by adopting wrong multiplier as 16, calculated the loss of income at Rs.6,62,400/-. Therefore, this Court, by applying correct multiplier as '18' and fixing his monthly income for 30 days @ Rs.150/- per day, fixes his loss of income at Rs.4,500/-, based upon which, this court grants compensation under the head 'loss of income' as follows:

$$4500 \times 12 \times 8 = \text{Rs.}9,72,000/-$$

9. Perusal of records would reveal that the expenses incurred under medical bills for medical treatment of the appellant would approximately amounts to Rs.3,30,382/-. Therefore, this Court grants Rs.3,30,382/- towards medical expenses incurred by the appellant. Considering the grave nature of the injuries suffered by the appellant and he needs others help for day to day work and an attender should always be with him and also taking note of his future medical needs, this Court grants a sum of Rs.1,50,000/- towards future medical treatment and attendant charges,



instead of Rs.1,00,000/- awarded by the tribunal. It appears that the tribunal has awarded a meagre amount of Rs.15,000/- towards transportation, hence, under such head, this court awards Rs.25,000/-. The amount awarded by this court under the conventional heads are tabulated hereunder:

<i>S.No.</i>	<i>Conventional Heads</i>	<i>Compensation Awarded</i>
1	Loss of income (4500 x 12x18x100)	Rs.9,72,000/-
2	Pain and sufferings	Rs.1,00,000/-
3	Medical Bills	Rs.3,30,382/-
4	Transportation charges	Rs. 25,000/-
5	Future medical expenses and attendant charges	Rs. 1,50,000/-
	Total	Rs.15,77,382/-

10. Thus, this Court awards a sum of Rs.15,77,382/- along with interest at the rate of 7.5% per annum. It is seen that the appellant has not taken any steps to number the appeal and the delay in numbering the appeal is on account of the appellant, hence the appellant is not entitled for interest from 2.8.2011 to 21.01.2019. From 22.01.2019 to till the date of realisation, the appellant is entitled for interest.



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11. In the result,

- the Civil Miscellaneous is partly allowed. No costs.
- As stated above, the appellant is not entitled for interest for the period from 2.8.2011 to 21.01.2019 as the delay in numbering the appeal is on the part of the appellant. From 22.01.2019 to till the date of realisation, the appellant is entitled for interest.
- Accordingly, the 2nd respondent/Insurance company is directed to deposit the enhanced compensation amount awarded by this court along with interest at the rate of 7.5% per annum, in the manner stated above, less the amount, if any, already deposited.
- On such deposit, the appellant is permitted to withdraw the entire compensation amount awarded by this court, less the amount, if any, already withdrawn, on making appropriate application before the trial court.

12-11-2024

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Index:Yes/No
Internet:Yes/No

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To

The Motor Accidents Claims Tribunal (I Addl. District Court), Erode.



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M.DHANDAPANI

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