

Mahendran Vs. Murugan and Another

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Court : Chennai Madurai

Decided On : Apr-18-2016

Judge : The Honourable Ms. Justice V.M. Velumani

Appeal No. : C.M.A. (MD) No. 1394 of 2012 & M.P (MD). No.1 of 2015

Appellant : Mahendran

Respondent : Murugan and Another

Judgement :

(Prayer:This Civil Miscellaneous Appeal is filed under Section 173 of Cr.P.C. against the Award and Decree made in MCOP.No.310 of 2003 on the file of the Motor Accidents Claims Tribunal / Additional Subordinate Judge, Thanjavur, dated 01.02.2012.)

1. This Civil Miscellaneous Appeal is filed against the Judgment and Decree made in MCOP.No.310 of 2003 on the file of the Motor Accidents Claims Tribunal / Additional Subordinate Judge, Thanjavur, dated 01.02.2012.

2. The appellant is the claimant. The first respondent is owner and second respondent is insurer of the vehicle which involved in the accident. The appellant sustained injury in the accident and filed claim petition claiming a sum of Rs.2,00,000/- as compensation. The Tribunal awarded a sum of Rs.50,800/- as compensation. Aggrieved by the quantum of compensation, awarded by the Tribunal, the appellant / claimant is before this Court.

3. The facts of the case are as follows:-

(a) On 09.09.2002, at about 8.15 am, while the appellant / claimant was riding his two wheeler bearing Registration No.TCO 2218 from East to West on the Collector Office Road, a Two Wheeler bearing Registration No.TN 49 H 8758 came in the opposite direction, driven by the first respondent, in a rash and negligent manner and dashed against the appellant / claimant and he sustained multiple injuries all over the body. The appellant / claimant claimed a sum of Rs.2,00,000/- as compensation, before the Tribunal, for the injuries suffered by him, due to rash and negligent driving by the first respondent.

(b) The first respondent remained ex parte before the Tribunal.

(c) The second respondent filed a counter statement and stated that the appellant has not impleaded the insurer of the Two Wheeler bearing Regn. No. TC0 2218 driven by the appellant as a necessary party. The second respondent also stated that the appellant must prove his age, income, occupation and the nature of injuries alleged to have been suffered by him. According to the second respondent, the accident did not take place due to rash and negligent driving of the first respondent. The accident took place only due to the contributory negligence of the appellant / claimant. The quantum of compensation claimed is excessive and therefore, prayed for dismissal of the claim petition.

(d) Before the Tribunal, the appellant examined himself as PW.1 and Two Doctors viz., Dr. V. Jayabalan and Dr. C.J. Balachandra were examined as PW.2 and PW.3 and marked 15 documents as Ex.P1 to EX.P15. On the side of respondents, no one was examined and no document was marked.

(e) Tribunal framed necessary points for consideration. On considering the pleadings, oral and documentary evidence and arguments, the Tribunal came to the conclusion that the accident took place, only due to the rash and negligent driving by the first respondent and held that the respondents are liable to pay compensation of a sum of Rs.50,800/- together with interest at 6% per annum from the date of petition till the date of realisation, to the appellant / claimant.

4. Not being satisfied with the said Judgment and Decree, the appellant / claimant has filed the present appeal for enhancement of compensation.
5. The only point for consideration in this appeal is whether the appellant is entitled to enhancement of compensation or not.
6. The learned counsel for the appellant contended that due to the injuries sustained in the accident, the appellant / claimant could not sit and squat. Further, he is also facing difficulty in eating and also the face is disfigured. The disability as per Ex.A13 and Ex.A15 is assessed at 46% and therefore, the Tribunal should have taken as the disability as 46% and prayed for enhancement of compensation.
7. The first respondent remained ex parte before the Tribunal and therefore, he was given up in this appeal.
8. The learned counsel for second respondent contended that Tribunal has considered all the materials on record including the evidence of Doctors PW.2 and PW.3 and disability Certificate Ex.A13 and Ex.A15 awarded compensation. Tribunal following the proper formula arrived at percentage of disability at 40.8%. As per the Judgment of the Division Bench of this Court awarded Rs.1,000/- per percentage of disability. Tribunal has given valid reason for the quantum of compensation awarded and therefore, prayed for dismissal of appeal.
9. I have heard the learned counsel appearing on either side and carefully perused the materials available on record.
10. The appellant, by examining PW.2 and PW.3, has proved that he suffered permanent disability at 46%. Taking into consideration the nature of injuries sustained by the claimant, this Court enhances the compensation from Rs.1,000/- for 1% of disability to Rs.2,000/- per 1% of disability i.e Rs.92,000/- (Rs.2,000 x 46), under the head of disability.
11. Admittedly, the appellant was admitted in the hospital for surgery and for that period, the Tribunal has not granted any amount towards attendant charges. Hence, a sum of Rs.10,000/- is, hereby, awarded towards attendant charges. Further, the amount awarded by the Tribunal towards Transportation and extra

nourishment charges and pain and suffering is very meagre. Hence, a sum of Rs.10,000/- each, is hereby awarded towards extra-nourishment charges and pain and suffering and a sum of Rs.1,000/- is granted towards transportation. Tribunal dis-allowed the claim of the appellant towards medical expenses. The appellant has not substantiated this claim before the Tribunal. Therefore, the Tribunal has rightly rejected the claim of the appellant. Thus, the award of the Tribunal is enhanced from Rs.50,800/- to Rs.1,23,000/- in the following manner:-

S.No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted
1	Disability (48%)	40,800.00	92,000.00	Enhanced by Rs.55,200/-
2	Pain and Suffering	5,000.00	10,000.00	Enhanced by Rs.5,000/-
3	Extra nourishment	5,000.00	10,000.00	Enhanced by Rs.5,000/-
4	Transportation	--	1,000.00	Granted Rs.1,000/-
5	Attendant charges	-	10,000.00	Granted Rs.10,000
	Total	50,800/-	Rs.1,23,000.00	Enhanced by Rs.76,200/-

12. The award of interest at the rate of 6% per annum is modified as 7.5% per annum.

13. The second respondent / Insurance Company is directed to deposit the said sum of Rs.1,23,000/- (Rupees One Lakh and Twenty Three Thousand only) together with interest, after deducting the amount already deposited if any, 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 entire award amount, on filing proper application before the Tribunal.

14. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

