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Court : Chennai Madurai

Decided On : Apr-12-2016

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

Appeal No. : C.M.A.(MD)No. 1382 of 2012

Appellant : Saravanan

Respondent : Anantharaj and Another

Judgement :

(Prayer: The Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicles Act, to allow the appeal and modify the judgment and decree of the learned Additional Subordinate Judge, Motor Accident Claims Tribunal, Thanjavur, in M.C.O.P.No.535 of 2008, dated 01.03.2012, by enhancing the award amount to Rs.5 Lakhs to the appellant with proportionate interest.)

1. The Civil Miscellaneous Appeal is filed by the appellant / claimant challenging the award dated 01.03.2012 in M.C.O.P.No.535 of 2008, passed by the learned Additional Subordinate Judge, Motor Accidents Claims Tribunal, Thanjavur.

2. The appellant is the claimant. He filed a claim petition before the Tribunal for the injuries sustained by him in road accident claiming a sum of Rs.5,00,000/- as compensation. The first respondent is owner of the vehicle and the second respondent is the Insurance Company.

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

(i) It is the case of the appellant / claimant before the Tribunal is that on 25.01.2008 at about 6.00 p.m., the claimant along with his co-worker were walking near Universal Theatre, Thiruppur. At that time, the first respondent's lorry, which was coming behind the appellant, was driven by its driver in a rash and negligent manner and dashed against the appellant and due to the said impact, the appellant sustained multiple injuries. The appellant was admitted in Government Hospital, Thiruppur and subsequently, at Thanjavur Medical College Hospital, as inpatient from 25.01.2008. The accident occurred only due to rash and negligent driving by the driver of the lorry and hence, claimed a sum of Rs.5,00,000/- as compensation.

(ii) As there was no representation for the first respondent/owner of the vehicle, he was set ex parte before the Tribunal. The second respondent / Insurance Company filed counter statement and denied all the allegations and contended that the accident took place only due to the negligence of the appellant / claimant and not due to rash and negligent driving by the driver of the first respondent and also denied their liability to pay the compensation to the claimant. The compensation claimed is excessive.

(iii) Before the Tribunal on the side of the claimant, two witnesses were examined as P.W.1 - Appellant and P.W.2 - Doctor and 7 documents were marked as Exs.A1 to A7. On the side of the second respondent / Insurance Company, a case sheet was marked as Ex.X1 and no one was examined as witness.

(iv) The Tribunal considering the pleadings, evidence both oral and documentary, awarded a sum of Rs.1,48,440/- as compensation with 6% interest per annum to the appellant / claimant. 4. Not being satisfied with the said award, the appellant has come forward with the present civil miscellaneous appeal, for enhancement of compensation.

5. The learned counsel for the appellant / claimant submitted that the Tribunal failed to consider the fact that the appellant was working in a Printing Unit at Thiruppur and earning a sum of Rs.5,000/- p.m. and hence, the monthly income

ought to have been fixed as Rs.5,000/-. Further, the Tribunal has erroneously considered Ex.A6 - Disability Certificate and took 18% disability instead of 88%, based on the oral evidence of the doctor during his cross-examination, which was erroneously typed as 18% instead of 88% disability and the Tribunal fixed 70% partial permanent disability and awarded Rs.1,000/- per percent of disability and thereby, awarded Rs.70,000/- towards disability compensation instead of Rs.2,000/- per percentage. The Tribunal has erroneously awarded Rs.73,440/- towards loss of income by adopting wrong calculation and awarded a total sum of Rs.1,48,440/- under different heads. The said award is very low and hence, the same may be enhanced.

6. Per contra, the learned counsel for the second respondent / Insurance Company contended that the Tribunal considered all the materials on record, especially, the evidence of P.W.2 - Doctor and awarded compensation. It is just compensation and prayed for dismissal of the civil miscellaneous appeal.

7. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent / Insurance Company and perused the entire materials on record.

8. As per Ex.A.6 - Disability Certificate, the claimant sustained 88% disability. P.W.2 - Doctor deposed that due to the impact of the injuries sustained by the claimant, he is suffering from knee bend and difficult to walk and work and also the movement of the leg reduced by 7 c.m. due to fracture in femur bone. Further, the movement of the right leg knee joint and right foot has been reduced. As per Ex.A6, the disability of the claimant was assessed as 88% permanent and 12% as partial permanent. Due to the injuries, four plastic surgeries were conducted. In my considered view, as per Ex.A6, the disability of the claimant is assessed as 70%. Considering the fact that at the time of accident, the age of the claimant was 26 years and also considering the fact that he took treatment as inpatient from 25.01.2008 to 25.04.2008, the award amount towards 70% disability is calculated by applying Rs.2,000/- per percentage and hence, a sum of Rs.1,40,000/- has to be awarded. Accordingly, for 70% disability, a sum of Rs.1,40,000/- is awarded. For pain and sufferings and attendant charges, the Tribunal did not award any

amount. Considering the nature of the injury and also considering the fact that the appellant took treatment from 25.01.2008 to 25.04.2008 as inpatient, I am of the view that Rs.50,000/- is awarded towards pain and suffering and attendant charges. Considering the fact that the claimant was working in a Printing Unit and he took treatment from 25.01.2008 to 25.04.2008 as inpatient, the award amount towards future loss of income is enhanced from Rs.73,440/- to Rs.98,440/-. The Tribunal has awarded a sum of Rs.5,000/- towards transport to hospital and extra nourishment. Considering the facts and circumstances, amount towards Transportation is enhanced to Rs.10,000/- and a sum of Rs.20,000/- is awarded towards extra nourishment. The interest at the rate 6% p.a., awarded by the Tribunal is confirmed.

9. Accordingly, the appellant / claimant is entitled for compensation as follows:

Sl. No.	Description	Amount awarded by the Tribunal	Amount awarded by this Court	Award amount modified or granted
1	Future loss of income	73440	98440	Modified
2	Transport to Hospital and extra nourishment	5000	10000 (Transportation only)	Modified
3	Extra nourishment	-	20000	Granted
4	Permanent disability	70000	140000	Modified

5	Pain and suffering and attendant charges	-	50000	Granted
	Total	148440	318440	Enhanced by Rs.1,70,000/-

Hence, the appellant / claimant is entitled for a sum of Rs.3,18,440/- with interest at 6% per annum as compensation. The second respondent / Insurance Company is directed to deposit the entire award amount with accrued interest and costs, if not already deposited, within eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is entitled to withdraw the same.

10. In the result, the award dated 01.03.2002, passed in M.C.O.P.No.535 of 2008 by the learned Additional Subordinate Judge, Motor Accidents Claims Tribunal, Thanjavur, is hereby modified and the Civil Miscellaneous Appeal is partly allowed. No costs.

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