



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.04.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A(MD) No.1100 of 2014

G.Kannan

.. Appellant/Petitioner

vs.

1.Xavier Immanuvel Doss

2. The Branch Manager,
National Insurance Company Ltd.,
5A, Sub-Collector Officer Road,
Dindigul Town, Dindigul.

..Respondents/Respondents

Prayer: This Petition filed under Section 173 of the Motor Vehicles Act, 1988, to allow the appeal and enhance the award dated 17.04.2013 in M.A.C.O.P.No.57 of 2009, on the file of the Motor Accident Claims Tribunal-cum-learned Chief Judicial Magistrate, Dindigul to the tune of Rs.1,39,500/-.

For Appellant : Mr.M.Nallakannan

For R2 : Mr.D.Sivaraman

JUDGMENT

Not being satisfied with the award passed by the Motor Accident Claims Tribunal-cum-Chief Judicial Magistrate, Dindigul made in M.C.O.P.No.57 of 2009, dated 17.04.2013, the claimant has filed this appeal, for enhancement of compensation.

2.The appellant is the claimant. The first respondent is the owner of the vehicle. Second respondent is the insurer of the vehicle, which was involved in the accident. The appellant filed a claim petition claiming a sum of Rs.2,00,000/-, as compensation, for the injuries sustained by him, in the accident took place on 19.12.2007. The Tribunal awarded a sum of Rs.60,500/-. Not being satisfied with the said amount, the appellant has filed the present Civil Miscellaneous Appeal.

3.Facts of the case:-

According to the appellant, on 19.12.2007, the appellant was a pillion rider in TVS-XL-TN-59-L-1049, which was driven by one



Muruganandam. At that time, one Mahendra van belonging to the first respondent was driven in a rash and negligent manner, dashed against two wheeler and the appellant and said Muruganandam sustained multiple injuries and fracture. The appellant was admitted in the hospital and he was taking treatment from 19.12.2007 to 07.01.2008, as in patient for the injuries suffered by him in the accident. He underwent surgery. He was not completely cured and not able to do the work as earlier. Therefore, he claimed a sum of Rs.2,00,000/- as compensation. The first respondent remained ex-parte before the Tribunal.

4.The second respondent filed counter statement and denied all the averments made by the appellant. The second respondent stated that the rider of the two wheeler only responsible for the accident. The appellant must prove that the driver of two wheeler and driver of Mahendra Van had driving licence at the time of accident. Appellant suffered only simple injuries and the compensation claimed is excessive.

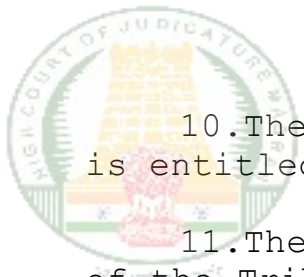
5.Before the Tribunal, the appellant was examined as P.W.1. Rider of Two wheeler Muruganandham was examined as P.W.2. Dr.Vijayakumaran was examined as P.W.3 and marked 8 documents as Ex.A1 to Ex.A8. The respondents did not let in any oral and documentary evidence.

6.Tribunal considering the pleadings, evidence both oral and documentary and arguments, came to the conclusion that accident took place only due to rash and negligent driving by driver of the Mahendra Van. As far as quantum of compensation is concerned considering the nature of injuries and evidence awarded a sum of Rs.60,500/-. Not being satisfied with the said amount, the appellant has filed the present appeal.

7.Learned counsel for the appellant contended that the Tribunal failed to appreciate the evidence of P.W.3 Doctor in proper perspective. The Tribunal failed to consider that P.W.3 Doctor certified the appellant suffered 31% permanent disability, erred in reducing the same to 16%. The compensation awarded in other heads also is very low. The appellant was taking treatment as in patient and no compensation was granted to attendant charges.

8.The learned counsel for the second respondent submitted that Tribunal after considering the evidence of P.W.3 in proper perspective held that P.W.3 Doctor was not the Doctor, who treated the appellant. Tribunal ought to have rejected the evidence of P.W.3. Therefore, the learned counsel prayed for dismissal of the Civil Miscellaneous Appeal.

9.I have heard the learned counsel appearing for the parties and perused the materials available on record.



10.The only point for consideration is whether the appellant is entitled to enhancement of compensation.

11.The respondents have not filed any appeal against the award of the Tribunal, challenging the finding with regard to negligence on the part of the driver of the first respondent. Therefore, the said finding has become final.

12.As far as quantum of compensation is concerned, the appellant examined P.W.3 Doctor Vijayakumaran and marked documents Exs.P2, P7 and P8 with regard to nature of injuries suffered by him and permanent disability caused to him, due to the injuries suffered in the accident. P.W.3 Doctor is not the doctor, but he examined the appellant and deposed that the appellant suffered 31% of permanent disability. The respondent did not let in any evidence to disprove the evidence of P.W.3 Doctor. Tribunal reduced percentage of disability to 16%, without giving any reason. Therefore, the appellant is entitled to get compensation for 31% at Rs.2,000/- per percentage. $31 \times 2000 = 62,000$. The appellant was taking treatment from 19.12.2007 to 07.01.2008 as in patient. He suffered fracture and underwent surgery. Therefore, the compensation for pain and suffering and extra nourishment are enhanced from Rs.10,000/- to Rs.25,000/- and Rs.500/- to Rs.5,000/- respectively. The Tribunal did not grant any amount for attendant charges and a sum of Rs.10,000/- is granted for attendant charges. In all other aspects, the award of the Tribunal is confirmed. Though the appellant is claimed Rs.1,500/- for extra nourishment, considering the fact that the appellant was taking treatment from 19.12.2007 to 07.01.2008 and underwent surgery, the amount is enhanced to Rs.5000 from Rs.500/-.

13. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation, as below:-

S. No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted
1.	Loss of income	6,000	6,000	confirmed
2.	Disability	32,000	62,000	enhanced
3.	Pain and suffering	10,000	25,000	Enhanced
4.	Medical expenses	10,000	10,000	confirmed

5.	Transportation	1,500	1,500	confirmed
6.	Damage to clothes	500	500	confirmed
7.	Attendant charges		10,000	Awarded
8.	Extra nourishment	Rs.500	Rs.5,000	enhanced
	Total	Rs.60,500	Rs.1,20,000	Enhanced by Rs.59,500

14. In the result, the Civil Miscellaneous Appeal is partly allowed and the order of Tribunal is modified and the amount awarded by the Tribunal is enhanced to Rs.1,20,000/- (Rupees One lakh Twenty Thousand only). The 2nd Respondent Insurance Company is directed to deposit the award amount, now fixed by this Court, with interest at 7.5% per annum, to the credit of MCOP.No.57 of 2009, on the file of the Motor Accident Claims Tribunal/Learned Chief Judicial Magistrate, Dindigul, 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 being made, the appellant would be entitled to Rs.1,20,000/- and with respective proportionate accrued interest and costs, less the amount, if any, already withdrawn. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Dindigul.
2. The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.M.Nallakannan, Advocate, Sr.No.23275
+1cc to Mr.D.Sivaraman, Advocate, Sr.No.22294

am

JM/GSV-PM/SAR-III/03.06.2016/4P-5C