

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2034 of 2015

M.Thangavel

.. Appellant

Vs.

1.M/s.M.R.Shah Logistics Pvt. Ltd.,
Proprietor, Pikrikai P.Agarwal
No.355, Ward No.12B
Gandhidham, Kutch
Gujarat-370 201.

2.SBI General Insurance Company Ltd.,
No.64, Greams road
Dugar building, Ground floor
Chennai-600 006.

(1st respondent was set exparte before
the Court below. Hence notice
may be dispensed with)

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.07.2015 made in M.C.O.P.No.78 of 2013 on the file of the Motor Accidents Claims Tribunal / III Additional District Court, Thiruvallur at Poonamallee.

For Appellant : Mr.C.Prabakaran

For R1 : Exparte

For R2 : M/s.M.B.Gopalan Associates

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 01.07.2015 made in M.C.O.P.No.78 of 2013 on the file of the Motor Accidents Claims Tribunal / III Additional District Court, Thiruvallur at Poonamallee.

2.The appellant is claimant in M.C.O.P.No.78 of 2013 on the file of the Motor Accidents Claims Tribunal / III Additional District Court, Thiruvallur at Poonamallee. He has filed the said claim petition claiming a sum of Rs.25,03,000/- as compensation for the injuries sustained by him in the accident that took place on 15.12.2012.

3.The Tribunal considering the pleadings and oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the vehicle belonging to the first respondent and the second respondent as insurer of the vehicle is liable to pay the compensation and awarded a sum of Rs.8,03,975/- as compensation to the appellant.

4.Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal for enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the Tribunal has erred in not accepting the oral and documentary evidence let in by the appellant with regard to salary received by him. The Tribunal erroneously rejected the same and fixed notional income of the appellant at Rs.5,000/- per month and the same is very meagre. The appellant was 57 years at the time of accident and the correct multiplier as per the judgment reported in the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation) is 9. The Tribunal erred in applying the multiplier of 8. The appellant was in hospital from 15.12.2012 to 02.01.2013 for 17 days and underwent four surgeries and his left hand below the elbow was amputated. The Tribunal failed to grant any amounts towards attendant charges, extra nourishment, transportation, future medical expenses and the amount for artificial hand. Therefore, he prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the appellant has not produced any acceptable evidence with regard to his income. The Tribunal has rightly rejected the evidence of the appellant and fixed notional income at Rs.5,000/- per month, which is reasonable. The appellant is a diabetic patient for more than ten years and amputation of his left hand was only due to diabetic and not due to the injuries sustained by him in the accident. The amount awarded by the Tribunal is excessive and there is no reason for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel for the appellant as well as the learned counsel appearing for the second respondent and perused the materials available on record.

8.The appellant has contended that he was working as a Supervisor in Arthi Motors and was earning a sum of Rs.20,000/- per month. The appellant has produced a letter from Arthi Motors and the same was marked as Ex.P12, wherein it is stated that the appellant was working as a Service Manager for three years and paid a sum of Rs.15,000/- per month. Apart from this letter, the appellant has not produced any documents like attendance register and salary payment register and has not examined any body from Arthi Motors to substantiate the same. In view of the same, the Tribunal has not accepted Ex.P12 salary certificate of the appellant and fixed the notional income at Rs.5,000/- per month, which is meagre. The accident occurred on 15.12.2012 and age of the appellant was 57 years at the time of accident. Considering the age and contention of the appellant with regard to his work, the notional income of the appellant is fixed at Rs.8,000/- per month. As per the judgment of the Hon'ble Apex Court reported in the case of Sarla Verma cited supra, multiplier for the person aged 57 years is 9. In the present case, multiplier method is adopted for compensation for the injuries sustained by the appellant. In the judgment reported in 2005 1 CTC 38 (United India Insurance Company vs. Veluchamy), the Division Bench of this Court has held that a lesser multiplier can be adopted while granting compensation for the injuries. In view of the same, multiplier adopted by the Tribunal is reduced from 8 to 7. The Tribunal considering the evidence of P.W.2/Doctor and Ex.P13/disability certificate, fixed the disability of the appellant at 83%. The appellant is entitled to compensation for the disability as follows:

$$\text{Rs.8000} \times 12 \times 7 \times 83/100 = \text{Rs.5,57,760/-}$$

9.The contention of the learned counsel for the appellant that the Tribunal has not granted any amounts towards attendant charges, extra nourishment and transportation, has considerable force. The appellant was in-patient from 15.12.2012 to 02.01.2013 and underwent four surgeries. In view of the same, Rs.10,000/-, Rs.30,000/- and Rs.5,000/- granted towards attendant charges, extra nourishment and transportation respectively. The appellant has not proved his entitlement for compensation under other heads as claimed in the claim petition and grounds of appeal. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	3,98,400	5,57,760	enhanced

2.	Medical expenses	3,05,575	3,05,575	confirmed
3.	Pain and suffering	1,00,000	1,00,000	confirmed
4.	Attendant charges	-	10,000	awarded
5.	Extra nourishment	-	30,000	awarded
6	Transportation	-	5,000	awarded
	Total	8,03,975	10,08,335	Enhanced by Rs.2,04,360/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,03,975/- is hereby enhanced to Rs.10,08,335/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant is directed to pay the difference in Court fee within a period of two weeks from the date of receipt of a copy of this judgment. The second respondent/Insurance Company is directed to deposit the enhanced award amount with interest now determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount, less the amount if any, already withdrawn. No costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Motor Accidents Claims Tribunal
III Additional District Judge
Thiruvallur at Poonamallee.

+1 CC to Mr.N. Vijayaraghavan, Advocate sr 77130.
+1 CC to Mr.C.Prabakaran, Advocate sr 77312.

C.M.A.No.2034 of 2015

SPD(CO)
SP(20/12/2018)