

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2309 of 2015

Gopi

.. Appellant/Petitioner

Vs.

1.R.Manoharan

2.National Insurance Co. Ltd.,

Branch Office at No.81 D,

Chetty Street, Opposite to Bus Stand,

Thiruchengodu - 637 211.

.. Respondents/Respondents

(1st respondent remained Ex-parte before the
trial Court and notice may be dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 21.03.2007 made in M.C.O.P.No.497 of 2003, on the file of the Additional Special Court, Motor Accidents Claims Tribunal, Krishnagiri.

For Appellant : Mr.S.C.Vishwanth

For R1 : Ex-parte before the trial Court

For R2 : Mr.S.Arun Kumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 21.03.2007 made in M.C.O.P.No.497 of 2003, on the file of the Special Court, Krishnagiri.

2.The appellant is claimant in M.C.O.P.No.497 of 2003, on the file of the Special Court, Krishnagiri. He filed the above claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 20.09.2002.

3.The Tribunal considering the pleadings, oral and

documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the Mahindra Jeep belonging to the 1st respondent and directed the second respondent/Insurance Company to pay a sum of Rs.3,53,750/- as compensation to the appellant.

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

5. The learned counsel appearing for the appellant contended that P.W.2/Doctor has certified that the appellant suffered 50% disability and the Tribunal ought to have applied multiplier method as entire life of the appellant is affected. In any event, the amount awarded by the Tribunal towards permanent disability is meager. The appellant underwent three surgeries and in spite of the same, he is not fully cured. He was in the hospital as an in-patient and amounts awarded for extra nourishment and transportation are contrary to the judgment of the Hon'ble Apex Court. Therefore, he prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal has accepted the evidence of P.W.2/Doctor with regard to percentage of disability and awarded compensation and the same is proper. The amounts awarded by the Tribunal under different heads are not meager. The appellant has not made out any enhancement of compensation and prayed for dismissal of the appeal.

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

8. From the materials on record, it is seen that due to the injuries sustained in the accident, the appellant has suffered 50% permanent disability. The appellant has proved the same by examining P.W.2/Doctor and by marking Ex.P2 wound certificate issued by him. The Tribunal accepting the contention of the appellant, awarded compensation at the rate of Rs.1,000/- per percentage. The appellant has not proved that he suffered functional disability and has not let in any evidence to prove that he is totally immobilized and has suffered functional disability. From the photographs produced by the appellant, it is seen that his left leg near the ankle has shrunk. The learned counsel appearing for the appellant contended that due to this disability, the appellant is not able to walk or run or not able to lead a normal life. Considering the disability of the appellant, the amount awarded by the Tribunal towards permanent disability is enhanced at the rate of Rs.1,500/- per percentage and the same is as follows:

Permanent disability - Rs.1,500/- X 50 = Rs.75,000/-

9.A sum of Rs.10,000/- and Rs.3,000/- granted by the Tribunal towards extra nourishment and attendant charges are hereby enhanced to Rs.15,000/- and Rs.5,000/-. The Tribunal has not granted any amount for pain and suffering. The appellant was 7 years at the time of accident and underwent three surgeries. In view of the same, he would have suffered severe pain and therefore, a sum of Rs.50,000/- is granted towards pain and suffering. The Tribunal granted only 6% interest and the same is enhanced to 7.5% per annum from the date of petition till the date of realisation. 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.	Transportation	5,000	5,000	confirmed
2.	Extra nourishment	10,000	15,000	enhanced
3.	Permanent disability	50,000	75,000	enhanced
4.	Attender Charges	3,000	5,000	enhanced
5.	Pain and suffering	-	50,000	awarded
6	Medical Expenses	2,85,750	2,85,750	confirmed
	Total	3,53,750	4,35,750	Enhanced by Rs.82,000/-

10. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.3,53,750/- awarded by the Tribunal is hereby enhanced to Rs.4,35,750/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. It is made clear that the appellant/claimant shall not be entitled for any interest for the delay period on the enhanced amount of Rs.82,000/-. The second respondent/Insurance Company is directed to deposit the enhanced award amount, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted

to withdraw the enhanced award amount with accrued interest,
after adjusting the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk/kj

To

1.The Special Judge
Krishnagiri.

2. The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 78500
+1cc to Mr.S.C.Viswanth, Advocate, S.R.No. 78693

CMA.No.2309 of 2015

SR(CO)
GN(24/01/2019)