

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2868 of 2018

Cyril

.. Appellant / Petitioner

Vs.

1. Feroze Khan

2. The Divisional Manager,
United India Insurance Company Limited,
No:95, Big Street, First Floor,
Thiruvannamalai.

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.07.2017 in M.C.O.P.No.264 of 2014 on the file of Motor Accidents Claims Tribunal, Special Sub Court at Thiruvannamalai.

For Appellant : S.Partheeban

R1 : Exparte

For R2 : T.Ravichandran

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the award dated 14.07.2017 made in M.C.O.P.No.264 of 2014 on the file of Motor Accidents Claims Tribunal, Special Sub Court, Thiruvannamalai.

2.The appellant is claimant in M.C.O.P.No.264 of 2014 on the file of Motor Accidents Claims Tribunal, Special Sub Court, Thiruvannamalai. He filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 09.03.2014.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the vehicle belonging to the first respondent and directed the second respondent being the insurer of the first respondent's vehicle, to pay a sum of Rs.1,19,116/- 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 seeking enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the Tribunal considering the percentage of disability certified by the Medical Board, nature of injuries and treatment taken by the appellant, ought not to have applied percentage method for granting compensation towards disability. The Tribunal without considering that the appellant was taking treatment as an in-patient for one month, has failed to grant any amount towards loss of income during treatment period. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation. In support of his contention, he relied on the following judgment of this Court reported in 2008 (1) TN MAC 228 (A.Sakthivel vs. R.Periyasamy and another);

"12. The claimant was working as Accountant in Salem Treasury and the Salary Certificate is marked as Ex.A5. From Ex.A5, it is seen that he was getting salary of Rs.7,356/- as on August 2001. Since the Claimant had taken treatment for about one month, presumably the claimant must have taken medical leave. As rightly submitted by the learned counsel for the claimant, had he not sustained injury the claimant would have surrendered his medical leave and he would have earned for the salary for that period. Though the claimant had drawn the salary, since he was on medical leave, it would be appropriate to award Rs.5,000/- for loss of income during the period of treatment."

6. Per Contra, the learned counsel appearing for the second respondent/Insurance Company contended that the appellant did not suffer any functional disability and he has continued to work as Assistant Engineer in Tamil Nadu Electricity Board and there is no loss of earning capacity or loss of income. The Tribunal has considered all the materials on record and granted just 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 all the materials available on record.

8. From the materials available on records, it is seen that the appellant was referred to Medical Board and the Medical Board certified that the appellant has suffered 10% disability. It is also seen from the records that the appellant continued to

work as Assistant Engineer in Tamil Nadu Electricity Board and there is no loss of income or loss of earning capacity. The Tribunal considering these facts, has awarded compensation on percentage basis. Hence, the award of the Tribunal granting compensation for 10% disability suffered by the appellant on percentage basis is proper. According to the learned counsel appearing for the appellant, the appellant was taking treatment in the hospital as in-patient for one month. The appellant has not pointed out that he suffered loss of income during treatment period and hence, he is not entitled for any amount under this head. Considering the nature of injuries and the disability suffered, the appellant is entitled to a sum of Rs.20,000/- towards attendant charges. A sum of Rs.5,000/- and Rs.10,000/- awarded by the Tribunal towards extra nourishment and pain and suffering are meagre and hence, they are hereby enhanced to Rs.10,000/- and Rs.20,000/- respectively. The learned counsel appearing for the appellant contended that the accident occurred in Thiruvannamalai and the appellant was taking treatment in Apollo Hospital, Chennai. Though the appellant did not produce any document with regard to transportation, he would have spent some amount towards transportation. Therefore, a sum of Rs.10,000/- is awarded towards transportation. The amounts awarded by the Tribunal under all other heads are just and reasonable and the same are hereby confirmed. The judgment relied on by the learned counsel for the appellant does not advance the case of the appellant in the facts and circumstances of the case. 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 (10%)	30,000	30,000	Confirmed
2.	Pain and suffering	10,000	20,000	Enhanced
3.	Medical expenses	74,116	74,116	Confirmed
4.	Extra nourishment	5,000	10,000	Enhanced
5.	Attendant charges	-	20,000	Granted
6.	Transportation	-	10,000	Granted
	Total	1,19,116	1,64,116	Enhanced by Rs.45,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,19,116/- is hereby enhanced to Rs.1,64,116/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. The second respondent/Insurance Company is directed to deposit the enhanced award amount with interest and costs 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 along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1) The Motor Accidents Claims Tribunal,
Special Sub Judge
Thiruvannamalai.
- 2) The Section Officer,
VR Section,
High Court, Madras.

+1 cc to Mr.T.Ravichandran, Advocate, S.R.No.89716

+1 cc to Mr.S.Partheeban, Advocate, S.R.No.89244

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C.M.A.No.2868 of 2018

SSV(CO)
SSM(14/03/2019)

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