

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2750 of 2018

Sekar

.. Appellant/Petitioner

Vs.

1.Muniappan

2.The National Insurance Co. Ltd.,
3rd Floor, Anuradha Complex,
Bangalore Road,
Krishnagiri.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 15.03.2018 made in M.C.O.P.No.132 of 2017, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Dharmapuri.

For Appellant : Mr.T.L.Thirumalaisamy

For R2 : Ms.N.B.Surekha

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation awarded by the Tribunal in the award dated 15.03.2018 made in M.C.O.P.No.132 of 2017, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Dharmapuri.

2.By consent of both the parties, the appeal itself is taken up for final disposal at the admission stage.

3.The appellant is the claimant/petitioner in M.C.O.P.No.132 of 2017, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Dharmapuri. He filed the said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.08.2016.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the Tata Indica Car belonging to the 1st respondent and directed the 2nd respondent, insurer of the vehicle to pay a sum of Rs.15,35,200/- as compensation to the appellant.

5.Not being satisfied with the award passed by the Tribunal, the appellant/claimant has come out with this appeal.

6.The learned counsel appearing for the appellant even though raised various grounds in the appeal for enhancement of compensation, at the time of arguments, he contended that the appellant restricted his claim for enhancement of compensation for loss of earning capacity and pain and suffering. The learned counsel for the appellant contended that the appellant was working as a lorry driver and he has produced Ex.P10, pay certificate and Ex.P11, copy of the Bank account statement. The Tribunal without properly appreciating the same, has fixed the notional income of the appellant at Rs.6,500/- per month, which is very meager and has to be enhanced. The accident took place on 05.08.2016. The appellant was in hospital from 05.08.2016 to 05.09.2016 and underwent surgery. The appellant has sustained grievous injury and the Medical Board has assessed his disability at 51%. The Medical Board has also noted that the appellant is limping and he was in the hospital from 05.08.2016 to 05.09.2016. The amounts awarded by the Tribunal for pain and suffering is very meager and prayed for enhancement of the compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent contended that the appellant has not produced any document to show that he was a driver at the time of accident. The Tribunal held that the appellant has not filed his driving license to prove that he was working as a driver. The appellant has not examined his alleged employer to prove his salary as per Ex.P10. The Bank statement produced by the appellant does not substantiate his claim that he was earning a sum of Rs.22,500/- per month. In the absence of any proof, the Tribunal rightly fixed the notional income of the appellant at Rs.6,500/-, which is reasonable. The learned counsel for the 2nd respondent further contended that the amount awarded by the Tribunal towards pain and suffering is not meager and prayed for dismissal of the appeal.

8.Heard the learned counsel for the appellant as well as the 2nd respondent and perused the materials available on record.

9.The appellant contended that he was working as a lorry driver and was earning a sum of Rs.22,500/- per month. To

substantiate the same, he has produced Ex.P10, pay certificate. The appellant has not examined anybody to prove the said document. From Ex.P11, Bank statement produced by the appellant, it is seen that no amount was deposited regularly every month. The Tribunal held that the appellant has not produced driving license to prove that he was working as a driver. In view of the same, the finding of the Tribunal that the appellant has not substantiated his claim with regard to his income, is valid. The Tribunal fixed the notional income of the appellant at Rs.6,500/- per month. The accident occurred on 05.08.2016. The notional income fixed by the Tribunal is too meager. Hence, a sum of Rs.9,000/- is fixed as notional income. The age of the injured is 38 and hence, the multiplier applicable is '15'. Thus, the amounts granted under the head of loss of earning capacity is modified as follows:

$$\text{Rs.9,000} \times 12 \times 15 \times 51\% = \text{Rs.8,26,200/-}$$

Considering the nature of injuries and treatment taken by the appellant, the Tribunal has awarded compensation under different heads, which are not meager. Hence, the amounts granted by the Tribunal in all other heads are just and reasonable and they are hereby confirmed. 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.	Future loss of income	5,96,700/-	8,26,200/-	enhanced
2.	Pain and suffering	20,000/-	20,000/-	confirmed
3.	Extra nourishment	20,000/-	20,000/-	enhanced
4.	Attender charges	20,000/-	20,000/-	confirmed
5.	Transport charges	10,000/-	10,000/-	confirmed
6.	Loss of income	19,500/-	19,500/-	confirmed
7.	Loss of amenities	50,000/-	50,000/-	confirmed
8.	Medical expenses	7,99,000/-	7,99,000/-	confirmed
	Total	15,35,200/-	17,64,700/-	Enhanced by Rs.2,29,500/-

10.In the result, the appeal is partly allowed and award granted by the Tribunal is enhanced to Rs.17,64,700/- with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the award amount with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.132 of 2017. On such deposit, the appellant is permitted to withdraw the award amount with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Special District Judge,
(Motor Accidents Claims Tribunal), Dharmapuri.

Copy To:

The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.T.L.Thirumalaisamy, Advocate Sr.No.83195

+1 cc to M/s.N.B.Surekha, Advocate Sr.No.82871

C.M.A.No.2750 of 2018

GP(CO)
CSL/12.03.2019

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