

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2758 of 2018

G.Saravanan

.. Appellant/Petitioner

Vs.

1.A.R.Ajayakumar

2.Iffco Tokio General Insurance Co. Ltd.,
No.128, 5th Floor, Habibullah Road,
T.Nagar, Chennai 600 017. .. Respondents/Respondents

(R1 set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 23.01.2018, made in M.C.O.P.No.2798 of 2012 on the file of the II Additional Sub Court, (Motor Accident Claims Tribunal), Cuddalore.

For Appellant : Mr.R.Sreedhar

For R2 : Mr.C.R.Krishnamoorthy
for Ms.K.Saraswathi

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the award dated 23.01.2018, made in M.C.O.P.No.2798 of 2012 on the file of the II Additional Sub Court, (Motor Accident Claims Tribunal), Cuddalore.

2.The appellant is the claimant in M.C.O.P.No.2798 of 2012 on the file of the II Additional Sub Court, (Motor Accident Claims Tribunal), Cuddalore. He filed the said claim petition, claiming sum of Rs.7,00,000/- as compensation for the injuries suffered by him in the accident that took place on 19.10.2012.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred solely due

to rash and negligent riding by the rider of the motor cycle belonging to the 1st respondent and 2nd respondent, as the insurer of the vehicle is liable to pay a sum of Rs.1,67,000/- as compensation to the appellant.

4. Not being satisfied with the award dated 23.01.2018, made in M.C.O.P.No.2798 of 2012, the appellant/claimant has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the appellant sustained injuries and the Medical Board has assessed the percentage of disability as 17.5%. The Tribunal ought to have applied the multiplier method for awarding compensation. The Tribunal ought to have awarded loss of future earning capacity by applying the multiplier method. The amounts awarded by the Tribunal are meager and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant has not let in any evidence, except his oral evidence to substantiate his claim to prove the loss of earning capacity. The appellant has not proved that he suffered functional disability and he is not entitled to compensation by applying the multiplier method. The amounts awarded by the Tribunal are not meager and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

8. From the materials on record, it is seen that the appellant has claimed that he was working as a barber and earning a sum of Rs.15,000/- per month. He suffered 17.5% disability as certified by the Medical Board attached to the Government Headquarters Hospital, Cuddalore. The appellant has not examined any Doctor to prove that due to 17.5% disability, he has lost his earning capacity and is entitled to compensation by applying the multiplier method. In such circumstances, the amount awarded by the Tribunal on percentage basis is valid and there is no reason to apply multiplier method and modify the same. Hence, the sum of Rs.52,500/- (Rs.3,000/- x 17.5) awarded by the Tribunal towards loss of earning capacity is confirmed. In the absence of any materials to show that the appellant suffered loss of earning capacity, the Tribunal has awarded Rs.6,500/- for one month towards loss of income. The appellant

was in Abirami Hospital, Cuddalore for a period of 3 days from 21.10.2012 to 23.10.2012 as inpatient and underwent surgery. The Tribunal has not granted any amount towards extra nourishment. Hence, a sum of Rs.10,000/- is granted under the head of extra nourishment. Considering Ex.P5, medical bills, the Tribunal has awarded a sum of Rs.30,324/- towards the medical expenses. The amounts awarded by the Tribunal towards pain and suffering is enhanced from Rs.20,000/- to Rs.25,000/- and the sum of Rs.15,000/- awarded towards loss of amenities is enhanced to Rs.20,000/-. The amounts awarded by the Tribunal under all other heads are just and reasonable and the same 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.	Loss of earning	52,500	52,500	confirmed
2.	Transport	5,000	5,000	confirmed
3.	Special diet	10,000	10,000	confirmed
4.	Pain and suffering	20,000	25,000	enhanced
5.	Loss of amenities	15,000	20,000	enhanced
6.	Medical bills	30,324	30,324	confirmed
7.	Attendant charges	2,000	2,000	confirmed
8.	Loss of income	6,500	6,500	confirmed
9.	Future medical expenses	25,000	25,000	confirmed
10.	Extra nourishment	-	10,000	granted
	Total	1,66,324 rounded off to 1,67,000	1,86,324 rounded off to 1,87,000	Enhanced by Rs.20,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,67,000/- is hereby enhanced to Rs.1,87,000/-, with interest and costs. The 2nd respondent 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 order. On such deposit, the appellant is permitted to withdraw the award amount with interest and costs after adjusting the amount already withdrawn, if any,/ by filing necessary applications before the Tribunal. No costs

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

gsa
To

1. The II Additional Subordinate Judge,
(Motor Accident Claims Tribunal), Cuddalore.

2. The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.C.R.Krishnamoorthy, Advocate sr 86902.

+1 CC to Mr.R.Sreedhar, advocate sr 87175.

C.M.A.No.2758 of 2018

SSD(CO)
SP(21/03/2019)

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