

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2602 of 2018

V.Balu .. Appellant/Petitioner
Vs.

1.Velsamy Sivah
(set exparte before the Tribunal)

2.The Divisional Manager,
United India Insurance Company Limited,
DO, 13A, Nethaji Road,
Cuddalore. .. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 26.07.2018 made in M.C.O.P.No.659 of 2013 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Cuddalore.

For Appellant : Mr.R.Sreedhar

For R1 : Ex parte

For R2 : Mr.T.Ravichandran

JUDGMENT

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 26.07.2018 made in M.C.O.P.No.659 of 2013 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Cuddalore.

2.The appellant is claimant and respondents are respondents in M.C.O.P.No.659 of 2013 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Cuddalore. The appellant filed the above claim petition claiming a sum of

Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.12.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the rider of the motorcycle/first respondent and directed the second respondent insurer to pay a sum of Rs.86,700/- as compensation to the appellant.

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

5.The learned counsel appearing for the appellant contended that the appellant has produced disability certificate issued by the Medical Board, which was marked as Ex.C1, wherein it has been certified that the appellant suffered 36% partial permanent disability. The Tribunal even after taking note of the disability certificate issued by the Medical Board, failed to award any amount towards permanent disability. The Tribunal ought to have applied multiplier method for awarding compensation. The appellant took treatment from 05.12.2012 to 15.12.2012 for 11 days as in-patient and was continuously taking physiotherapy treatment. The Tribunal has not granted any amount towards attendant charges. In view of the above facts, the Tribunal ought to have awarded higher compensation and prayed for enhancement of compensation.

6.Per Contra, the learned counsel appearing for the second respondent/Insurance Company contended that after taking treatment, the appellant continued to work in NLC General Hospital, Neyveli and he has not suffered any functional disability and there is no loss of income. The Tribunal considering the evidence of appellant/P.W.1 did not award any amount towards loss of earning capacity. The amounts awarded by the Tribunal under different heads are not meager 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 available on record.

8.From the materials on record, it is seen that the Medical Board has certified that the appellant suffered 36% permanent disability. The Tribunal did not award any compensation towards

disability of the appellant on the ground that the appellant continued his work, he does not suffer any functional disability, there is no loss of income and awarded compensation only towards loss of amenities. Considering the materials on records in entirety, the appellant is entitled to a sum of Rs.1,08,000/- (3000 X 36) towards disability by awarding Rs.3,000/- per percentage of disability as he has suffered 36% disability. The appellant was admitted as in-patient in hospital from 05.12.2012 to 15.12.2012 for 11 days and he is entitled to a sum of Rs.10,000/- towards attendant charges. The amounts awarded by the Tribunal under the different heads are just compensation and hence, 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.	Transportation	5,000	5,000	confirmed
2.	Special diet	10,000	10,000	confirmed
3.	Pain and suffering	35,000	35,000	confirmed
4.	Loss of amenities	25,000	25,000	confirmed
5.	Medical bills	11,700	11,700	confirmed
6.	Attendant charges	-	10,000	granted
7.	Disability	-	1,08,000	granted
	Total	86,700	2,04,700	Enhanced by Rs.1,18,000 /-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.86,700/- is hereby enhanced to Rs.2,04,700/- 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 in filing the appeal. 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 order. On such deposit, the appellant is permitted to withdraw the enhanced award amount with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal
II Additional Subordinate Judge,
Cuddalore.

Copy To
The Section Officer, VR Section, Madras High Court.

+1cc to Mr.T.Ravichandran, Advocate SR.No.83915

+1cc to Mr.R.Sreedhar, Advocate SR.No.83975

C.M.A.No.2602 of 2018

RSI (CO)
GMY (15/02/2019)

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