

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1138 of 2015

R.Rajasekar

.. Appellant/Petitioner

Vs.

1.R.Dhanapakkiam (Owner of the Vehicle)

2.M.Pathiran (Driver)

3.The New India Assurance Company Ltd.,
No.84-A, Trivandrum Road,
Palayamkottai,
Thirunelveli627 002

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.12.2012 in M.C.O.P.No.1244 of 2010 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.Ravichandran Sundaresan

For R1 : No Appearance

For R3 : Mr.R.Neethi Perumal

R2 सत्यमेव जयते : Not Known

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation awarded by the Tribunal in M.C.O.P.No.1244 of 2010 dated 14.12.2012 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

2.The appellant is claimant in M.C.O.P.No.1244 of 2010 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai. He filed the said claim petition

claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 21.08.2009.

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 bus belonging to the first respondent and directed the third respondent/Insurance Company, to pay a sum of Rs.4,28,300/- as compensation to the appellant/claimant.

4.Not being satisfied with the amount awarded by the Tribunal, 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 Tribunal without properly appreciating the evidence on record, has awarded meager amount as compensation. The appellant/claimant was working as an Assistant Project Officer, (Magaleer Thittam) in the Rural Department, Government of Tamil Nadu and was earning a sum of Rs.29,190/- per month and also produced Ex.P6/salary certificate. The Tribunal without considering the salary certificate, erroneously fixed the monthly income at Rs.20,000/-. The appellant took leave from 21.08.2009 to 15.08.2010 for treatment and the amount granted by the Tribunal for loss of earning for four months is also meagre. The appellant has been taking continuous treatment and the Tribunal failed to grant any amount towards future medical expenses. The Tribunal ought to have awarded Rs.2,00,000/- towards future medical expenses. The amount awarded by the Tribunal towards extra nourishment and transportation are very meagre. The appellant/claimant has suffered 50% disability and to prove the same, the doctor was examined as P.W.2. The Tribunal ought to have applied multiplier method and awarded compensation. The Tribunal ought to have awarded more compensation for personal injuries, pain and suffering, loss of expectation of life and transportation. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per Contra, Mr.R.Neethi Perumal, learned counsel appearing for the third respondent-Insurance Company contended that the appellant/claimant after taking leave, joined duty and he is working in the same post and subsequently, he was also promoted. There is no loss of earning capacity and income. The appellant is not entitled for compensation by applying multiplier method. The Tribunal fixed 50% of disability as assessed by P.W.2/Doctor and awarded a sum of Rs.1,00,000/- towards permanent disability

at the rate of Rs.2,000/- per percentage which is proper. 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 third respondent/Insurance Company and perused all the materials available on record.

8. From the materials available on record, it is seen that the appellant has contended that he was working as an Assistant Project Officer, (Magaleer Thittam) in the Rural Department, Government of Tamil Nadu and was earning a sum of Rs.30,000/- per month and produced Ex.P6/salary certificate. In Ex.P6/salary certificate, the salary earned by the appellant was mentioned as Rs.29,190/- including basic pay, dearness allowance and other allowances. Ex.P6/salary certificate is dated 15.08.2010, while the accident had occurred on 21.08.2009. It appears that the appellant had taken leave for 267 days out of which, 131 days were leave on loss of pay with medical certificate. Since there was no corresponding salary certificate for the relevant period during which the accident had taken place, the Tribunal relying upon Ex.P6 salary certificate produced by the appellant, fixed the monthly income as Rs.20,000/- by reducing a sum of Rs.9,190/- and awarded a sum of Rs.80,000/- towards loss of income for four months (20,000/- x 4).

9. It is pertinent to note that as per Ex.P6 salary certificate, admittedly, the appellant was drawing salary at Rs.29,190/- as on 17.08.2010 and the accident took place on 21.08.2009 and therefore, reducing a sum of Rs.9,190/- just for one year difference, in the opinion of this Court, is not proper since one year back, the appellant might not have drawn salary at Rs.20,000/- but certainly, he would have drawn salary more than Rs.25,000/-. Hence, the monthly income of the appellant is modified and fixed as Rs.25,000/- and the appellant is entitled for loss of income for 8 months. Accordingly, the amount awarded by the Tribunal towards loss of income is enhanced to Rs.2,00,000/- (Rs.25,000/- X 8). The appellant claimed Rs.50,000/- towards transportation and produced Ex.P12/series transportation bills. The Tribunal awarded a sum of Rs.16,574/- stating that only the bill Nos.402, 74 and 80 are corresponding to medical records. There is no error in the said reasoning and hence, the same is confirmed by this Court. Considering the nature of injuries and disability sustained by the appellant, the sum of Rs.25,605/- granted by the Tribunal towards extra nourishment is enhanced to Rs.40,000/-. As regards medical expenses, the appellant has produced Ex.P13/medical bills for

a sum of Rs.2,01,680.26. The Tribunal has not accepted two bills for Rs.5,000/- and Rs.25,605/- in Ex.P13 on the ground that Bill No.1576 dated 21.08.2009 for Rs.5,000/- is an advance receipt and Rs.25,605/- of inpatient bill dated 03.09.2009 is towards consumable charges. The reason given by the Tribunal for rejecting the above amounts is valid. Hence, the amount of Rs.1,71,075/- [Rs.2,01,680/- - (Rs.5,000/- + Rs.25,605/-)] awarded by the Tribunal towards medical expenses is confirmed. The Tribunal has awarded a sum of Rs.5,000/- towards attendant charges, which is meagre and the same is enhanced to Rs.20,000/-. The Tribunal awarded a sum of Rs.30,000/- and Rs.1,00,000/- respectively towards pain and suffering and disability and the same is hereby confirmed by this Court. The appellant has not suffered any functional disability and the contention of the learned counsel for the 3rd respondent that appellant was promoted is not denied by the learned counsel for the appellant. Hence, the appellant is not entitled to compensation by applying multiplier method. The appellant has not substantiated his claim that he requires future medical expenses and hence not entitled to any amount under this Head. 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 income	80,000	2,00,000	enhanced
2.	Transportation	16,574	16,574	confirmed
3.	Extra nourishment	25,605	40,000	enhanced
4.	Medical expenses	1,71,075	1,71,075	confirmed
5.	Attendant charges	5,000	20,000	enhanced
6.	Pain & suffering	30,000	30,000	confirmed
7.	Disability	1,00,000	1,00,000	confirmed
	Total	4,28,254/- (rounded off to 4,28,300/-)	5,77,649/- (rounded off to 5,77,700/-)	Enhanced by 1,49,400/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,28,300/- is hereby enhanced to Rs.5,77,700/- together with interest at the rate of 7.5% per annum from the date of

petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The third respondent is directed to deposit the enhanced award amount along 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/claimant 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-VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judge,
Motor Accident Claims Tribunal,
IV Court of Small Causes,
Chennai.
- 2.The Section Officer,
V.R Section,
High Court,
Madras.

+lcc to Mr.Ravichandran Sudaresan, Advocate, S.R.No.104765

C.M.A.No.1138 of 2015

MP (CO)

CB(28/08/2020)

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