

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1362 of 2015

Ananthalakshmanan

... Appellant/Claimant

Vs.

1.Jayabalan

2.The Manager,

United India Insurance Company Limited,

171/E, R.K.S.Complex,

Nehruji Road, Villupuram.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.08.2014 made in M.C.O.P.No.329 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Villupuram.

For Appellant : Mr.S.Kalyanaraman

For R2 : Mr.S.Arun Kumar

1st Respondent : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 19.08.2014 made in M.C.O.P.No.329 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Villupuram.

2.The appellant is the claimant in M.C.O.P.No.329 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Villupuram. He filed the above said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.01.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the first respondent and directed the respondents to pay

jointly or severally a sum of Rs.5,61,752/- 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 P.W.2/Doctor assessed the percentage of disability as suffered by the appellant at 65% and the Tribunal reduced the same to 57% and granted compensation for 57% disability, which is not correct. The Tribunal ought to have awarded compensation for 65% disability. The appellant has taken treatment as in-patient in Puducherry JIPMER hospital from 05.01.2010 to 10.01.2010 and from 10.01.2010 to 24.02.2010 in Right hospital, Kilpauk, Chennai and underwent surgery on 12.01.2010 and the Tribunal has awarded only a sum of Rs.5,000/- towards attendant charges, which is meagre. The appellant was a driver and was earning a sum of Rs.15,000/- to Rs.20,000/- per month and the Tribunal fixed only a sum of Rs.6,000/- as monthly income. The Tribunal has not granted any amount towards future medical expenses. The amount awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal rightly awarded compensation for 57% disability as the P.W.2/Doctor assessed percentage of disability to particular organ of the body. The monthly income fixed by the Tribunal is not meagre as the appellant has not produced any material evidence to prove the same. The appellant is not entitled to any amount towards future medical expenses as the total compensation awarded by the Tribunal is excessive. The amount awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

7. I have heard the learned counsel appearing for the appellant as well as the second respondent-Insurance Company and perused the entire materials on record.

8. From the materials available on record, it is seen that the appellant has contended that he was working as driver and was earning a sum of Rs.15,000/- to Rs.20,000/- per month. He failed to prove the said contention. In the absence of any material evidence to substantiate the said contention, the Tribunal fixed a sum of Rs.6,000/- as monthly income, which is not meagre. Due to the injuries and fracture, the appellant could not have attended his work at least for 12 months. The amount awarded by the Tribunal towards loss of income is modified to Rs.72,000/- [Rs.6,000/- X 12]. P.W.2/Doctor has

certified the left leg disability of the appellant as 50% and right hand disability as 15%, totalling 65% disability. The Tribunal reduced the percentage of disability to 57% on the ground that P.W.2/Doctor has assessed percentage of disability to particular organ of the body and the same is not correct. The appellant is entitled to compensation for 65% disability. The compensation awarded by the Tribunal towards disability is modified to Rs.1,30,000/- [Rs.2,000/- X 65] at the rate of Rs.2,000/- per percentage. The learned counsel for the appellant contended that the appellant has taken treatment as in-patient in Puducherry JIPMER hospital from 05.01.2010 to 10.01.2010 and from 10.01.2010 to 24.02.2010 in Right hospital, Kilpauk, Chennai and underwent surgery on 12.01.2010 and the Tribunal has awarded only a sum of Rs.5,000/- towards attendant charges, which is meagre and the same is hereby enhanced to Rs.20,000/-. Considering the nature of injuries and disability, the appellant would have suffered more pain. Hence, a sum of Rs.40,000/- awarded by the Tribunal towards pain and suffering is hereby enhanced to Rs.60,000/-. The Tribunal has awarded a meagre sum of Rs.5,000/- towards extra nourishment and the same is hereby enhanced to Rs.20,000/-. The Tribunal has awarded a sum of Rs.10,000/- towards transportation, which is meagre and the same is hereby enhanced to Rs.20,000/-. A sum of Rs.15,000/- awarded by the Tribunal towards loss of amenities is hereby enhanced to Rs.25,000/-. The Tribunal has not granted any amount towards future medical expenses. Considering the nature of injuries, treatment taken by the appellant, the appellant is entitled to a sum of Rs.25,000/- towards future medical expenses. The amount awarded by the Tribunal under other heads are 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.	Pain and sufferings	40,000/-	60,000/-	Enhanced
2.	Extra nourishment	5,000/-	20,000/-	Enhanced
3.	Loss of income	60,000/-	72,000/-	Enhanced
4.	Damage to cloth	1,000/-	1,000/-	Confirmed
5.	Transportation	10,000/-	20,000/-	Enhanced
6.	Medical bills	3,11,751.85 rounded off to 3,11,752/-	3,11,752/-	Confirmed
7.	Loss of amenities	15,000/-	25,000/-	Enhanced
8.	Disability	1,14,000/-	1,30,000/-	Enhanced

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
9.	Attendant charges	5,000/-	20,000/-	Enhanced
10.	Future medical expenses	-	25,000/-	Granted
	Total	Rs.5,61,752/-	Rs.6,84,752/-	enhanced by Rs.1,23,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,61,752/- is hereby enhanced to Rs.6,84,752/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the Court fee, if any on the enhanced amount of compensation. The respondents are jointly or severally directed to deposit the enhanced award amount now determined by this Court, along 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. 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 by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Special Subordinate Judge No.II,
Motor Accident Claims Tribunal,
Villupuram.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to M/s.S.Kalyanaraman, Advocate Sr.30241
+1cc to Mr.S.Arunkumar, Advocate Sr.31130

C.M.A.No.1362 of 2015

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srg 30/09/2019