

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2590 of 2015

P.Govindasamy

.. Appellant/Claimant

Vs.

1.P.Satheeshkumar

2.V.M.Periyasamy

3.The National Insurance Company Limited,  
First Floor, No.333/1, Sekkalai Road,  
Five Lamps, Karaikkudi,  
Sivagangai District.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.04.2013 made in M.C.O.P.No.175 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Perundurai, Erode.

For Appellant : Mr.A.K.Kumarasamy  
Senior Counsel  
for Mr.S.Kaithamalaikumaran

For R3 : Mr.K.Padmanabhan

R1 & R2 : Set Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 15.04.2013 made in M.C.O.P.No.175 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Perundurai, Erode.

2.The appellant is the claimant in M.C.O.P.No.175 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Perundurai, Erode. He filed the above 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 19.05.2011.

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 bus belonging to the second respondent and directed the respondents jointly or severally to pay a sum of Rs.7,37,300/- 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.4/Doctor has certified the percentage of disability sustained by the appellant as 85% and the Tribunal without giving any reason reduced percentage of disability from 85% to 65%. The Tribunal ought to have accepted the disability certificate given by P.W.4/Doctor. Due to the injuries sustained in the accident, the appellant lost his left leg below knee as the same has been amputated. The appellant could not use both left hand and left leg. The Tribunal ought to have granted compensation for 85% disability. The appellant is a permanent employee as he has produced Ex.P6/salary certificate. The Tribunal erroneously rejected the salary certificate and fixed the monthly income of the appellant at Rs.4,500/-, which is very meagre. The appellant is aged 38 years at the time of accident and the Tribunal has not given any enhancement towards future prospects. Though the appellant has marked Exs.P10 to P12 to substantiate his claim that he has lost his earning capacity, the Tribunal erred in not taking into account the future earning capacity of the injured. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, Mr.K.Padmanabhan, learned counsel appearing for the third respondent-Insurance Company contended that the disability certificate given by P.W.4/Doctor is excessive. The Tribunal has considered the evidence of P.W.4/Doctor and reduced the percentage of disability to 65%, which is in order. The appellant was getting only a sum of Rs.2,850/- as salary as per Ex.P7/salary register and the other amounts mentioned in Ex.P6/salary certificate are only allowances. The appellant will not get the same allowances for every month. Hence, the monthly income fixed by the Tribunal is not meagre. The Tribunal already applied multiplier method for granting compensation towards loss of earning capacity. In view of the same, the amounts awarded by the Tribunal under other heads need not be enhanced with and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the third respondent/Insurance Company and perused the entire materials on record.

8. From the materials available on record, it is seen that the appellant has suffered multiple injuries and his left leg below knee has been amputated. The appellant suffered severe injuries in the left hand and P.W.4/Doctor has certified that appellant could not use both left hand and left leg and certified that appellant suffered 85% disability. The Tribunal considering the nature of injuries, disability and the nature of work done by the appellant, held that appellant lost his earning capacity and therefore applied multiplier method for granting compensation towards disability. The Tribunal considering the evidence of P.W.4/Doctor, disability certificate which relates to a part of the body, reduced the percentage of disability to 65% for the whole body. The reason given by the Tribunal is proper for reducing the percentage of disability. The appellant is aged 38 years at the time of accident and the correct multiplier applicable is '15', but the Tribunal erroneously applied multiplier '13' and granted compensation.

9. The appellant has produced Ex.P6/salary certificate and also examined the Managing Director of the Delux Re trading Company, Perundurai as P.W.2, who deposed that appellant was working as Marketing Executive in their Company and was earning a sum of Rs.10,250/- per month. The Tribunal considering Ex.P6/salary certificate, which includes incentives and other allowances, did not accept the contention of the appellant and Ex.P6/salary certificate and hence, fixed monthly income of the appellant at Rs.4,500/-. The accident occurred in the year 2011. The appellant will be getting incentive every month depending upon the work done by him and he will be receiving other allowances also. In view of the same, a sum of Rs.6,500/- is fixed as the monthly income of the appellant. The appellant was aged 38 years at the time of accident and the proper multiplier applicable is '15'. The amount granted by the Tribunal towards disability is enhanced to Rs.7,60,500/- [Rs.6,500/- X 12 X 15 X 65/100]. Considering the nature of injuries sustained by the appellant and the treatment taken by him, a sum of Rs.25,000/- granted by the Tribunal towards pain and sufferings is meagre and the same is enhanced to Rs.50,000/-. A sum of Rs.10,000/- granted by the Tribunal towards extra nourishment is meagre and the same is enhanced to Rs.25,000/-. The Tribunal has granted a sum of Rs.5,000/- towards attendant charges, which is meagre and the same is enhanced to Rs.15,000/-. The amounts awarded by the Tribunal towards medical expenses and transportation are reasonable and hence they are confirmed by this Court. 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.    | Disability         | 4,56,300/-                      | 7,60,500/-                        | Enhanced                               |
| 2.    | Pain and suffering | 25,000/-                        | 50,000/-                          | Enhanced                               |
| 3.    | Extra nourishment  | 10,000/-                        | 25,000/-                          | Enhanced                               |
| 4.    | Medical expenses   | 2,36,000/-                      | 2,36,000/-                        | Confirmed                              |
| 5.    | Attendant charges  | 5,000/-                         | 15,000/-                          | Enhanced                               |
| 6.    | Transportation     | 5,000/-                         | 5,000/-                           | Confirmed                              |
|       | Total              | Rs.7,37,300/-                   | Rs.10,91,500/-                    | enhanced by Rs.3,54,200/-              |

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,37,300/- is hereby enhanced to Rs.10,91,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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 to the credit of M.C.O.P.No.175 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Perundurai, Erode. 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.

सत्यमेव जयते

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Subordinate Judge,  
Motor Accident Claims Tribunal,  
Perundurai,  
Erode.

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

+1 CC to Mr.S.Kaithamalaikumaran, Advocate sr 102349.

C.M.A.No.2590 of 2015

SSV(CO)  
SP(02/09/2020)



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