

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

CORAM:

THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2340 of 2013

Krishnan

..Petitioner/Appellant

Vs.

1.Hemalatha

2.The United India Insurance Company Limited,
No.95, Big Street,
Thiruvannamalai. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.09.2012 made in M.A.C.T.O.P.No.29 of 2005 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Tiruvannamalai.

For Appellant : M/s.Subadra
for M/s.M.Malar

For R2 : Mr.A.Dhiraviyanathan

For R1 : Ex-parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 04.09.2012 made in M.C.O.P.No.29 of 2005 on the file of the Motor Accident Claims Tribunal, learned Principal Sub Judge, Tiruvannamalai.

2. The appellant is the claimant in M.A.C.T.O.P.No.29 of 2005 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Tiruvannamalai. He filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in a road accident that took place on 10.02.2004.

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3. Brief facts are as follows:-

On 10.02.2004, at about 12.50 P.M, the appellant was travelling in his cycle and his friend drove the said cycle. At that time, the bus bearing registration No.TN-31-S-670 driven by its driver in a rash and negligent manner came and hit the cycle from back side. Due to the said impact, the appellant sustained grievous injuries and was admitted in Government Hospital, Tirukoilur and later on took treatment in Government Hospital, Chennai. The accident occurred only due to the rash and negligent driving of the driver of the bus. Hence, the appellant had filed a claim petition before the Tribunal, claiming a sum of Rs.2,25,000/- as compensation.

4. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving of the driver of the bus belonging to the first respondent and directed the second respondent, being the insurer of the bus to pay a sum of Rs.2,25,000/- together with interest at the rate of 7.5% per annum as compensation to the appellant.

5. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal.

6. The learned counsel appearing for the appellant contended that the injured was aged about 33 years, earning a sum of Rs.5000/- per month as an agricultural coolie. However, the Tribunal granted only a meagre sum of Rs.15,000/- towards loss of income. The Tribunal ought to have applied multiplier method, while awarding compensation, as the injured is not able to continue his avocation as an agricultural coolie and the Tribunal also failed to consider the evidence of P.W.2, the Doctor, who assessed the disability as 75%. The learned counsel further contended the amounts awarded by the Tribunal under other heads are meagre and prayed for enhancement of compensation.

7. Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the appellant had not adduced strict proof for age, occupation, income and the nature of injuries sustained by him at the time of accident, by way of documentary evidence and hence, the appellant is not entitled for any enhancement in compensation. The second respondent/Insurance Company also denied the allegation that the appellant was seriously injured in the above accident. Hence, he prayed for dismissal of the appeal.

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8. Heard the learned counsel for the appellant as well as the learned counsel appearing for the second respondent and perused the entire materials on record.

9. From the materials available on record, it is seen that the appellant/claimant sustained injuries on forearm, due to which, the blood vessels crushed, injury on the left knee, abrasion on the left hand, injury on the left eyebrow, injury on the left side of the face below nose and amputation of the left hand below shoulder and multiple injuries over the body. P.W.2, the Doctor also assessed the disability at 75% and the Tribunal awarded a sum of Rs.1,50,000/- towards permanent disability which cannot be said to be meagre. Considering the nature of injuries, Rs.50,000/- awarded towards pain and sufferings is also just and proper. However, the Tribunal has awarded only a sum of Rs.15,000/- towards loss of income, which in the opinion of this Court is very meagre. In view of the injuries sustained by the appellant, he would not have attended regular work atleast for one year and hence, Rs.36,000/- (Rs.3,000/- X 12 months) is awarded towards loss of income. Similarly, since the injuries in the instant case are grievous in nature, Rs.5,000/- each awarded towards transport expenses and extra nourishment are meagre and they are hereby enhanced to Rs.10,000/- and Rs.15,000/- respectively. No amounts were awarded under the heads of attender's charges and damages to clothes and articles and therefore, Rs.15,000/- and Rs.1,000/- are awarded towards them respectively. This Court is also of the opinion that this is a fit case to award loss of amenities and hence a sum of Rs.30,000/- is awarded towards the same. 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)
1.	Permanent disability	1,50,000/-	1,50,000/-
2.	Transport expenses	5,000/-	10,000/-
3.	Extra nourishment	5,000/-	15,000/-
4.	Loss of Income	15,000/-	36,000/-
5.	pain and sufferings	50,000/-	50,000/-
6.	Attender's Charges	Nil	15,000/-
7.	Damage to clothes and articles	Nil	1,000/-

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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
8.	Loss of amenities	Nil	30,000/-
	Total	Rs.2,25,000/-	Rs.3,07,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,25,000/- is hereby enhanced to Rs.3,07,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the enhanced award amount as determined by this Court, along with interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.29 of 2005 on the file of the Motor Accident Claims Tribunal, learned Principal Sub Judge, Tiruvannamalai 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 same along with interest and costs, less the amount if any, already withdrawn, by making necessary application before the Tribunal. No Costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

kmm

To

1.Motor Accident Claims Tribunal,
Principal Subordinate Court,
Tiruvannamalai.

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

+1cc to Ms.M.Malar, Advocate SR.101483

+1cc to Mr.A.Dhiraviyanathan, Advocate SR.101420

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