

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1003 of 2018

Murugesan

.. Appellant

Vs.

1.Vanasekar

2.United India Insurance Co. Ltd.,
No.48, Arcot Road, Saligramam,
Chennai 600 093.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 08.06.2015, made in M.C.O.P.No.806 of 2012, on the file of the II Additional District Court, (Motor Accident Claims Tribunal), Poonamallee.

For Appellant : Mr.K.Varadhakamaraj

For R2 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the award dated 08.06.2015, made in M.C.O.P.No.806 of 2012, on the file of the II Additional District Court, (Motor Accident Claims Tribunal), Poonamallee.

2.The appellant/claimant filed M.C.O.P.No.806 of 2012, on the file of the II Additional District Court, (Motor Accident Claims Tribunal), Poonamallee, claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.07.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to negligence on the part of the appellant as well as rash and negligent driving by the driver of the car belonging to the 1st respondent and fixed 20% negligence on the appellant and 80% negligence on the driver of the car belonging to the 1st respondent. The Tribunal awarded a sum of Rs.4,39,800/- as compensation and directed the 2nd respondent-Insurance Company to

pay a sum of Rs.3,51,840/- (80% of the award) as compensation to the appellant.

4.Challenging the portion of the award fixing 20% negligence on the appellant as well as not being satisfied with the amounts granted by the Tribunal in the award dated 08.06.2015, made in M.C.O.P.No.806 of 2012, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the Tribunal erred in fixing 20% negligence on the part of the appellant considering Ex.P2-copy of the accident register which states that the appellant was smelling alcohol. The Tribunal ought to have rejected the said document since the author of the same was not examined and fixed entire negligence on the part of the driver of the car belonging to the 1st respondent relying on the FIR which is registered against the driver of the said car. The Tribunal ought to have awarded compensation for future medical expenses, loss of earning power, loss of amenities and attender charges and granted more compensation. The Tribunal ought not to have deducted 20% compensation on the ground of negligence and prayed for enhancement of the compensation.

6.Heard the learned counsel appearing for the appellant and perused the materials available on record. Though notice has been served on the 2nd respondent and their name is printed in the cause list, there is no representation for them either in person or through counsel.

7.From the materials on record, it is seen that the Tribunal has held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the 1st respondent and fixed 20% negligence on the part of the appellant on the ground that the appellant was smelling alcohol. From the award of the Tribunal, it is seen that no blood test was conducted to prove that the appellant was under the influence of alcohol and he drove the vehicle. The contention of the appellant is that he was sitting in the bench in the tea stall and the 1st respondent's car driven by its driver in a rash and negligent manner came and dashed the appellant and caused the accident. In view of the above said contention, the 20% negligence fixed on the appellant is set aside and the appellant is entitled for total compensation awarded by the Tribunal.

8.As far as the quantum of compensation is concerned, due to the accident, the appellant suffered fracture in the leg and has taken treatment in Hospital as in-patient from 15.07.2012 to 23.07.2012 and 04.12.2013 to 07.12.2013. P.W.2-Doctor assessed that the appellant suffered 57% disability. The Tribunal granted

a meagre sum of Rs.2,000/- per percentage for 57% disability. The accident is of the year 2012. The appellant is entitled to a sum of Rs.1,71,000/- towards disability at the rate of Rs.3,000/- per percentage for 57% disability. Due to the accident the appellant would have suffered loss of income for atleast six months. The Tribunal has granted meagre sum towards loss of income. The same is enhanced to Rs.45,000/- [Rs.7,500/- x 6 months]. The amounts granted by the Tribunal towards pain and suffering, extra nourishment, damages to clothes and transportation expenses are meagre. The same are enhanced to Rs.50,000/- towards pain and suffering, Rs.20,000/- towards extra nourishment, Rs.2,000/- towards damages to clothes and Rs.10,000/- towards transportation expenses. The Tribunal failed to grant any amount towards loss of amenities and attender charges. Hence, a sum of Rs.10,000/- is granted towards attender charges and a sum of Rs.20,000/- towards loss of amenities. The amount granted by the Tribunal towards medical expenses is just and reasonable and hence, the same is 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.	Partial permanent disability	1,14,000/-	1,71,000/-	Enhanced
2.	Medical expenses	2,55,300/-	2,55,300/-	Confirmed
3.	Pain and suffering	30,000/-	50,000/-	Enhanced
4.	Extra nourishment	10,000/-	20,000/-	Enhanced
5.	Loss of income	22,500/-	45,000/-	Enhanced
6.	Damages to clothes	1,000/-	2,000/-	Enhanced
7.	Transportation	7,000/-	10,000/-	Enhanced
8.	Loss of amenities	-	20,000/-	Granted
9.	Attender charges	-	10,000/-	Granted

	Total	4,39,800/-	5,83,300/-	Enhanced by Rs.1,43,500/-
		80% of the compensation 3,51,840/-		

9. In the result, the appeal is partly allowed and compensation granted by the Tribunal at Rs.3,51,840/- is enhanced to Rs.5,83,300/- along with interest and costs. The 2nd respondent is directed to deposit the enhanced award amount 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.806 of 2012. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary applications before the Tribunal. No costs. The appellant is directed to pay the necessary Court fee, if any for the amount now enhanced by this Court. No costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

gsa

To

1.The II Additional District Judge,
(Motor Accident Claims Tribunal),
Poonamallee.

2.The Section Officer,
V.R. Section,
High Court, Madras.

+1 cc to M/s.K.Varadhakamaraj Advocate sr42147

C.M.A.No.1003 of 2018

rr(co)
aa18/03/2020