



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.02.2019

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1190 of 2019

Chinnaponnu

..Appellant/Petitioner

Vs.

1.Balamurugan

2.IFFCO-TOKIO General Insurance Co,Ltd.,
Kingstone Park, 2nd floor,
No.19/1, Ramalinga Nagar,
Woraiyur, Trichy.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.11.2018 made in M.C.O.P.No.544 of 2016 on the file of the Motor Accident claims Tribunal, Chief Judicial Magistrate Judge Court, Namakkal.

For Appellant : Mr.T.S.Arthanareeswaran

For R2 : Mr.J.Michael Visuvasam

JUDGMENT

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the award dated 13.11.2018 made in M.C.O.P.No.544 of 2016 on the file of the Motor Accident claims Tribunal, Chief Judicial Magistrate Court, Namakkal.

2.The appellant is claimant in M.C.O.P.No.544 of 2016 on the file of the Motor Accident claims Tribunal, Chief Judicial Magistrate Court, Namakkal. The appellant filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 14.07.2012. 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 Tata ace belonging to the first respondent and directed the second respondent being the insurer of the first respondent's vehicle, to pay a sum of Rs.1,27,040/- as compensation to the appellant at the first instance and recover the same from the first respondent on the ground that the driver of the vehicle belonging to the first respondent was not possessing valid



driving license at the time of accident. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellant contended that the amount awarded by the Tribunal is not in consonance with the facts and circumstances of the case. The amount awarded by the Tribunal towards loss of income, pain and suffering, permanent disability and transportation are meagre. The appellant took treatment in hospital as in patient from 14.07.2012 to 24.07.2012 for 11 days. The appellant was doing buying and selling of maize corn and ground nuts. The Tribunal has not awarded any amount towards loss of amenities, attender charges and future medical expenses and prayed for enhancement of compensation.

4.Per contra, Mr.J.Michael Visuvasam, the learned counsel appearing for the 2nd respondent contended that the appellant has not let in any evidence to prove his avocation and income. The injuries sustained by the appellant is simple in nature. The Tribunal accepting the disability assessed by P.W.2-Doctor, granted compensation. The appellant has not proved that she did not continue her work and lost her income. The amount awarded by the Tribunal under different heads are not meagre and prayed for dismissing the Appeal.

5.Heard the learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

6.From the materials available on record, it is seen that the Tribunal has accepted the evidence of P.W.2-Doctor with regard to percentage of disability and considering the nature of injuries and avocation the Tribunal awarded compensation towards disability by applying percentage method. The appellant was treated as inpatient in hospital from 14.07.2012 to 24.07.2012 for 11 days. The Tribunal has not awarded any amount towards attender charges, loss of amenities and damages of cloth. The appellant would have lost income during and after treatment period. The appellant contended that she was doing maize corn and ground nuts buying and selling business and earning a sum of Rs.10,000/- per month. In the absence of any evidence, the Tribunal has fixed Rs.3,000/- as notional income of the first respondent. The accident had occurred in the year 2012. The amount fixed by the Tribunal towards notional income is meagre and this Court fixes notional income as RS.6,500/- per month. A sum of Rs.6,000/- awarded by the Tribunal towards loss of income is very meagre and the same is enhanced to Rs.39,000/- at the



rate of Rs.6,500/- per month for six month(Rs.6,500/- x 6). The Tribunal has not awarded any amount towards attender charges, loss of amenities and damages to cloth. The appellant is entitled to a sum of Rs.10,000/- each towards attender charges and loss of amenities and Rs.1,000/- towards damages to cloth. The amounts awarded by the Tribunal under all other heads are just and reasonable and the same are 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.	Loss of Income	6,000	39,000	Enhanced
2.	Transportation	5,000	5,000	Confirmed
3.	Extra Nourishment	10,000	10,000	Confirmed
4.	Medical Bills	31,040	31,040	Confirmed
5.	Pain and Suffering	30,000	30,000	Confirmed
6.	Permanent disability	45,000	45,000	Confirmed
7.	Loss of Amenities	-	10,000	Granted
8.	Attender Charges	-	10,000	Granted
9.	Damages to cloth	-	1,000	Granted
	Total	1,27,040	1,81,040	Enhanced by Rs.54,000/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,27,040/- is hereby enhanced to Rs.1,81,040/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. The second respondent-Insurance Company 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 at the first instance and recover the same from the first respondent. 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. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court, Namakkal.

Copy to : The Section Officer, V.R.Section,
High Court, Madras.

+2cc to M/s.C.Paraneedharan, Advocate Sr.No.17133

+1 cc to M/s.J.Michael Visuvasam, Advocate Sr.No. 16895

AKM/12.12.19/4P-6C /

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