

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.688 of 2016

A.P.Ramasamy

..Appellant/Petitioner

Vs.

1.Ravi

Prop.Nakkeerar road lines
No.57, Cauvery Street,
Bhavani, Erode District.

(Notice to R1 may be dispensed with
set ex parte before the tribunal)

2.Reliance General Insurance Co., Ltd.,

Sri Lakshmi Complex, 1st floor,
Bharathi Street, Omalur Main road,
Swarnpuri, Salem.

.. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 30.10.2015 made in M.C.O.P.No.576 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran
for Mr.C.Paraneedharan

For Respondent No.1 : Exparte

For Respondent No.2 : Mr.S.Arunkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 30.10.2015 made in M.C.O.P.No.576 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode.

2.By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3.The appellant is the claimant in M.C.O.P.No.576 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode. He filed the above 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 10.10.2014. 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 first respondent and directed respondents 1 and 2 to pay a sum of Rs.5,22,478/- as compensation jointly and severally to the appellant.

4.Not being satisfied with the award amount granted by the Tribunal, the appellant has come out with the present appeal for enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the Tribunal erred in awarding meager amount for disability sustained by the appellant. PW2 Doctor has issued disability certificate as well as wound certificate and deposed that the appellant suffered 58% of permanent partial disability. The Tribunal, on erroneous consideration, reduced the percentage of disability to 15%. The Tribunal ought to have awarded compensation for the disability at 70%. The Tribunal failed to see that due to the injuries and disability, the appellant lost his earning capacity and the Tribunal ought to have adopted multiplier method for calculating permanent disability. The appellant took treatment for more than 18 days in two different periods from 11.10.2014 to 23.10.2014 and 01.12.2014 to 05.12.2014. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the appellant has not proved that he has suffered any functional disability and therefore, he is not entitled to compensation by adopting multiplier method. The Doctor, who gave disability certificate, was not the doctor, who treated the appellant. The Tribunal, considering the nature of the injuries sustained by the appellant and treatment taken by him, rightly held that the percentage of disability certified by the doctor is on the higher side and reduced the same and awarded compensation. The Tribunal, after considering all the materials available on record, granted compensation under different heads and they are not meager and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant/claimant and the learned counsel appearing for the second respondent/Insurance Company and perused the materials available on record.

8. The appellant examined himself as PW1 and deposed that the disability is due to the injuries and he has not been able to do any agricultural work as he was doing earlier. He also examined PW2 doctor, who certified that the appellant has suffered 58% of permanent partial disability. The doctor also deposed that the appellant requires another surgery and has to spend Rs.22,000/- for the said surgery. But in the cross examination, he admitted that such operation will be done in the Government Hospital at free of cost and he did not depose that the appellant requires such an operation. The Tribunal, considering the same, reduced the percentage of disability to 15% on the ground that PW2 was not the Doctor, who treated the appellant and that percentage of disability as certified by the doctor is on the higher side. The said finding of the Tribunal is erroneous, especially, when the second respondent/Insurance Company has not let in any evidence to disprove the evidence of PW2 doctor. Under such circumstances, the appellant is entitled to compensation for 58% of disability at the rate of Rs.2,000/- per percentage amounting to Rs.1,16,000/- (58 x 2000). The Tribunal has awarded a sum of Rs.5,000/- each towards extra nourishment, pain and suffering and future treatment. Considering the nature of injuries and the disability, the amount awarded by the Tribunal under the head pain and suffering and extra nourishment is enhanced to Rs.10,000/- each and future medical expenses is enhanced to Rs.15,000/-. The amounts awarded by the Tribunal under all other heads are fair 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.	Transportation	5,000/-	5,000/-	confirmed
2.	Extra nourishment	5,000	10,000	enhanced
3.	For future treatment and medicine	5,000	15,000	enhanced
4.	medical expenses	4,67,478/-	4,67,478/-	confirmed
5.	Pain and suffering	5,000	10,000	enhanced

6	Permanent disability	30,000/-	1,16,000/-	enhanced
7.	Loss of earning power	5,000/-	5,000/-	confirmed
	Total	5,22,478/-	6,28,478/-	Enhanced by Rs.1,06,000 /-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,22,478/- is hereby enhanced to Rs.6,28,478/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The second respondent/Insurance Company is directed to deposit the enhanced award amount with interest 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 order. 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.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sms/klt
To

The Motor Accident Claims Tribunal,
Sub Court, Tiruchengode.

copy to
The Section Officer
VR Section High Court, Madras-104

+lcc to Mr.S.Arunkumar Advocate sr4788

C.M.A.No.688 of 2016

aa27/11/2019