

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2162 of 2019

R.Shanmugam

.. Appellant

Vs.

1.T.Pradeebhan
2.R.P.Sabapathi

3.The Branch Manager,
The Reliance General Insurance Company Ltd.,
1st Floor of Sri Lakshmi Complex,
Bharathi Street, Omalur Main Road,
Swarnapuri - 636 004, Salem Town,
Salem District.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.04.2018 made in M.C.O.P.No.37 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Gobichettipalayam.

For Appellant : Mr.SP.Yuaraj

For R3 : Mrs.C.Harini
for M/s.M.B.Gopalan Associates

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 23.04.2018 made in M.C.O.P.No.37 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Gobichettipalayam.

2.By consent of both the learned counsel appearing for the appellant and 3rd respondent-Insurance Company, the appeal is taken up for final disposal at the stage of admission itself.

3.The appellant is claimant in M.C.O.P.No.37 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Gobichettipalayam. He filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained

by him in the accident that took place on 25.09.2012. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent/driver of the lorry belonging to the 2nd respondent and directed the 3rd respondent-Insurance Company to pay a sum of Rs.13,74,000/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

4.The learned counsel appearing for the appellant contended that the appellant was working as a lorry cleaner and will get more than Rs.500/- per day and he can easily get Rs.15,000/- per month. The Tribunal erred in fixing only a sum of Rs.5,550/-per month as notional income of the appellant. The appellant sustained multiple injuries all over his body and his left hand was amputated below elbow. To prove the same, he examined himself as PW1 and produced disability certificate issued by the Medical Board. The Medical Board has certified 75% disability. The Tribunal has not awarded any enhancement towards future prospects. The amounts awarded by the Tribunal towards transportation, loss of marital prospects and pain & suffering are meagre. The Tribunal ought to have awarded compensation towards future medical expenses for fixing artificial limb and prayed for enhancement of compensation.

5.Per contra, the learned counsel appearing for the 3rd respondent/Insurance Company contended that the Tribunal considering the nature of injuries sustained by the appellant, awarded compensation towards disability by adopting multiplier method and the same is not meagre. In addition to that the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of marital prospects. In the absence of any material evidence with regard to income of the appellant, the Tribunal fixed a sum of Rs.5,550/- per month as notional income of the appellant. The Tribunal after considering both oral and documentary evidence, awarded compensation which is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

6.Heard the learned counsel appearing for the appellant as well as 3rd respondent/Insurance Company and perused all the materials available on record.

7.From the materials available on record, it is seen that the appellant has contended that he was working as a lorry cleaner and apart from that he was an agriculturist and was earning a sum of Rs.10,000/- per month. The appellant has failed to substantiate the said contention. In the absence of any material evidence, the Tribunal has fixed monthly income of

the appellant at Rs.5,550/-, adopted multiplier method and granted compensation for 75% disability. The appellant has contended that he was earning a sum of Rs.15,000/- per month. The Tribunal fixed monthly income of the appellant at Rs.5,550/-. The accident is of the year 2012 and the monthly income fixed by the Tribunal is meager. This Court awards a sum of Rs.7,500/-per month as notional income of the appellant including future prospects. Applying the multiplier '17' the amount granted by the Tribunal towards loss of earning capacity and permanent disability is modified to Rs.11,47,500/- (Rs.7,500/- x 12 x 17 x 75/100). The Tribunal has not awarded any amount towards future medical expenses, attendant charges, loss of amenities and damages to cloth and this Court awards a sum of Rs.25,000/-, Rs.20,000/-, Rs.20,000/- and Rs.2,000/- under those heads respectively. 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.	Medical expenses	2,64,000	2,64,000	Confirmed
2.	Loss of earning capacity and permanent disability	8,50,000	11,47,500	Enhanced
3.	Marital prospectus	1,00,000	1,00,000	Confirmed
4.	Transport to hospital	10,000	10,000	Confirmed
5.	Extra nourishment	50,000	50,000	Confirmed
6.	Pain & sufferings and mental agony	1,00,000	1,00,000	Confirmed
7.	Future medical expenses	-	25,000	Granted
8.	Attendant charges	-	20,000	Granted
9.	Loss of amenities	-	20,000	Granted

10.	Damages to cloth	-	2,000	Granted
	Total	Rs.13,74,000/-	Rs.17,38,500/-	Enhanced by Rs.3,64,500/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,74,000/- is hereby enhanced to Rs.17,38,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 3rd respondent-Insurance Company is 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. On such deposit, 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 (CS-VI)

//True Copy//

Sub Assistant Registrar

mtl

To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Gobichettipalayam.

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

+1 cc to Mr.S.P.Yuvaraj, Advocate, S.R.No.34525

+1 cc to Mr.M.B.Gopalan, Advocate, S.R.No.36024

C.M.A.No.2162 of 2019

SS(CO)
SSM(25/09/2019)