

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1390 of 2018

Rangasamy

...Appellant/Petitioner

Vs

1. R.Baladhandayuthapani

2. United India Insurance company Ltd.,
P.B.No.34, C.G.Complex,
No.139, Kumaran Road,
Tiruppur - 641 601.

...Respondents/Respondents

Prayer:-

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.02.2018 made in M.C.O.P.No.297 of 2014 on the file of Motor Accidents Claims Tribunal, I Additional District Court, Tiruppur.

For Appellant : Mr.S.Kaithamalaikumaran

For R2 : Mr.T.Ravichandran

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 06.02.2018 made in M.C.O.P.No.297 of 2014 on the file of Motor Accidents Claims Tribunal, I Additional District Court, Tiruppur.

2.The appellant is claimant in M.C.O.P.No.297 of 2014 on the file of Motor Accidents Claims Tribunal, I Additional District Court, Tiruppur. He filed the above claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 17.02.2014. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 1st respondent/driver-cum-owner of the omni van and directed the 2nd respondent/Insurance Company to pay a sum of Rs.3,25,000/- as compensation to the appellant. Not

being satisfied with the amount awarded by the Tribunal, the appellant/claimant has come out with the present appeal seeking enhancement of compensation awarded by the Tribunal.

3.The learned counsel appearing for the appellant/claimant contended that the Tribunal has reduced the percentage of disability assessed by the Doctor without any reason. The Tribunal ought to have applied multiplier method for granting compensation towards loss of earning. The amounts awarded by the Tribunal towards pain and suffering, extra nourishment and medical expenses are meagre. The Tribunal has not awarded any amount towards loss of income during treatment period and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal after considering the materials available on record, has 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.

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

6.From the materials available on record, it is seen that P.W.2/Doctor in his evidence has deposed that surgical scar & tenderness are present over left thigh & left hip joint movement and has certified the disability of the appellant at 48.23%. The Tribunal has reduced the same to 35% on the ground that the appellant was not treated by P.W.2/Doctor and awarded a sum of Rs.1,05,000/- (Rs.3,000/- X 35%) towards disability. The appellant has not proved that he suffered functional disability and there is loss of earning capacity. Therefore, the percentage method adopted by the Tribunal is proper. But the percentage of disability fixed by the Tribunal is erroneous. Considering the nature of injuries sustained by the appellant, this Court fixes the disability of the appellant at 48% and awards a sum of Rs.1,44,000/- (Rs.3,000/- X 48%) towards disability by awarding a sum of Rs.3,000/- per percentage of disability. Further, the Tribunal has awarded amounts under the heads of pain and suffering, medical expenses, attendant charges, transportation and extra nourishment, which are not meagre 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.	Disability	1,05,000	1,44,000	Enhanced
2.	Pain and suffering	25,000	25,000	Confirmed
3.	Medical expenses	1,65,000	1,65,000	Confirmed
4.	Attendant Charges	10,000	10,000	Confirmed
5.	Transportation	10,000	10,000	Confirmed
6.	Extra nourishment	10,000	10,000	Confirmed
	Total	3,25,000	3,64,000	Enhanced by Rs.39,000/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,25,000/- is hereby enhanced to Rs.3,64,000/- 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 2nd 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, the appellant/claimant 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 VIII)

//True Copy//

Sub Assistant Registrar

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To

1. I Additional District Judge
Motor Accident Claims Tribunal
Tiruppur.
2. The Section Officer
V.R.Section, High Court, Chennai.

+lcc to Mr.T.Ravichandran, Advocate, S.R.No.12973

C.M.A.No.1390 of 2018

RSK(CO)
CS/01/08/2019



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