

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.141 of 2018

Ponnamalai

... Appellant

Vs.

1.Singaram

2.The Oriental Insurance Co., Ltd.,
Kumar Complex, 1st Floor,
West Car Street, Tiruchengode & Taluk,
Namakkal District.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 21.07.2017, made in M.C.O.P.No.83 of 2014, on the file of the Sub Court, (Motor Accident Claims Tribunal), Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran

For R1 : No appearance

For R2 : Mr.S.Manohar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant seeking enhancement of the compensation granted by the Tribunal in the award dated 21.07.2017, made in M.C.O.P.No.83 of 2014, on the file of the Sub Court, (Motor Accident Claims Tribunal), Tiruchengode.

2.The appellant/claimant filed M.C.O.P.No.83 of 2014, on the file of the Sub Court, (Motor Accident Claims Tribunal), Tiruchengode, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.08.2013.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 1st respondent, rider-cum-owner of the motorcycle and directed the respondents 1 and 2 to pay a

sum of Rs.1,04,000/- as compensation jointly and severally to the appellant/claimant.

4. Not being satisfied with the amounts granted by the award dated 21.07.2017, made in M.C.O.P.No.83 of 2014, the appellant/claimant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that the Tribunal erred in awarding a meagre amount of compensation, not in consonance with the facts of the case. The appellant sustained multiple injuries and proved the nature of injuries by examining P.W.2-Doctor who assessed the appellant and certified that he suffered 35% disability. The Tribunal erroneously accepting the disability certificate issued by the Medical Board, granted meagre amount towards disability. The appellant was 38 years at the time of accident and he lost entire earning power. The Tribunal considering the nature of injuries, ought to have granted compensation for 50% disability. The appellant has taken treatment as inpatient for 7 days. The Tribunal has awarded meagre amount towards pain and suffering and attender charges. The Tribunal has not awarded any amount for loss of enjoyment of life and loss of amenities. The total compensation granted by the Tribunal is very meagre and prayed for enhancement of the same.

6. The learned counsel appearing for the respondent contended that the Tribunal considering the nature of injuries suffered by the appellant and the disability certificate issued by the Medical Board, fixed 23% disability and granted compensation, which is not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

8. From the materials on record, it is seen that the appellant has sustained malunited fracture of lateral condyle of left tibia, patella bone of left knee with osteoarthritis of left knee joint. He examined P.W.2-Doctor who assessed that the appellant suffered 35% disability. The appellant was referred to Medical Board. The Medical Board examined the appellant and certified that the appellant suffered only 23% disability. The Tribunal accepting the disability certificate issued by the Medical Board, granted compensation at the rate of Rs.3,000/- per percentage. In view of the same, the appellant is not entitled for any enhancement of compensation for disability. The

appellant has contended that he was a coolie and was earning a sum of Rs.30,000/- per month and the Tribunal erroneously fixed a meagre sum of Rs.6,000/- per month. Due to the injuries, he could not continue the work as he was doing earlier. Considering the date of accident and nature of injuries, a sum of Rs.7,500/- is fixed as the monthly income of the appellant and the compensation granted towards loss of income is modified to Rs.60,000/- at the rate of Rs.7,500/- for 8 months. The amounts granted by the Tribunal for extra nourishment is meagre. Hence, the same is enhanced to Rs.10,000/-. The Tribunal has not awarded any amount towards loss of amenities, future medical expenses and loss of cloth. The appellant is entitled to a sum of Rs.15,000/-, Rs.10,000/- and Rs.2,000/- towards the said heads respectively. The amounts granted by the Tribunal towards other heads are just and reasonable and the same are 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	69,000/-	69,000/-	confirmed
2.	Loss of income	18,000/-	60,000/-	Enhanced
3.	Transportation	2,000/-	2,000/-	confirmed
4.	Extra nourishment	5,000/-	10,000/-	Enhanced
5.	Damage to clothing	-	2,000/-	Granted
6.	Future Medical expenses	-	10,000/-	Granted
7.	Loss of amenities	-	15,000/-	Granted
8.	Medical expenses	10,000/-	10,000/-	Confirmed
	Total	1,04,000/-	1,78,000/-	Enhanced by Rs.74,000/-

9. In the result, the appeal is partly allowed and award granted by the Tribunal at Rs.1,04,000/- is enhanced to Rs.1,78,000/- along with interest and costs. The respondents 1 and 2 are jointly and severally directed to deposit the enhanced award amount along with interest and

costs, 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.83 of 2014. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Tiruchengode.

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

+lcc to Mr.S.Manohar, Advocate Sr.28145

C.M.A.No.141 of 2018

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srg 05/07/2019

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