



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2088 of 2019

Thangavel

... Appellant/Petitioner

Vs.

1.Mani

2.The National Insurance Co. Ltd.,
Divisional Office II, 11/289,
Ramakrishna Road,
Salem 636 007.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 09.01.2019, made in M.C.O.P.No.176 of 2017, on the file of the Special Sub Court No.2, (Motor Accident Claims Tribunal), Salem.

For Appellant : Mr.T.S.Arthanareeswaran

For R2 : Mr.J.Chandran

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 award dated 09.01.2019, made in M.C.O.P.No.176 of 2017, on the file of the Special Sub Court No.2, (Motor Accident Claims Tribunal), Salem.

2.By consent of the learned counsel appearing for the appellant as well as the 2nd respondent, the appeal is taken up for final disposal at the admission stage itself.

3.The appellant-claimant filed M.C.O.P.No.176 of 2017, on the file of the Special Sub Court No.2, (Motor Accident Claims Tribunal), Salem, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 16.10.2015.



4.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 car belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.1,18,033/- as compensation to the appellant.

5.Not being satisfied with the amounts granted by the Tribunal in the award dated 09.01.2019, made in M.C.O.P.No.176 of 2017, the appellant has come out with the present appeal.

6.The learned counsel appearing for the appellant contended that the appellant was aged 68 years and was earning a sum of Rs.10,000/- per month by doing agricultural work. He sustained grievous injuries and fractures in the accident and due to the injuries, he could not do the work as he was doing earlier. The appellant took treatment as in-patient in Ganga Medical Centre Hospital, Coimbatore from 16.10.2015 to 19.10.2015. The Medical Board assessed that appellant suffered 18% disability. The Tribunal mechanically considered only 9% disability and granted meagre sum towards disability. The Tribunal granted only meagre amount towards attender charges, pain and suffering and loss of amenities. In any event, the total compensation granted by the Tribunal is meagre and prayed for enhancement of the compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering all the materials on record in proper perspective fixed 9% disability and granted compensation under the head disability, which is not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

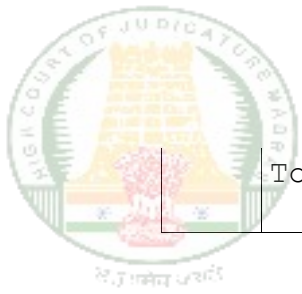
8.Heard the learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

9.From the materials on record, it is seen that the appellant has contended that he was working as an agriculturist and earning a sum of Rs.10,000/- per month. He failed to substantiate the said contention. In the absence of any material evidence to prove the same, the Tribunal fixed a sum of Rs.7,500/- as the monthly income of the deceased. The Tribunal considering the nature of injuries and relying on the judgment of the Hon'ble Apex Court, reduced the percentage of disability assessed by the Medical Board to 9%, holding that the appellant



suffered 9% functional disability. Considering the nature of injuries suffered by the appellant, the percentage of disability fixed by the Tribunal is meagre and the same is fixed at 15%. Hence, the amount granted by the Tribunal towards loss of income is modified to Rs.67,500/- [Rs.7,500/- x 12 x 5 x 15%]. The appellant was aged 70 years at the time of accident. Considering the age of the appellant, he would have suffered more pain. He has taken treatment as in-patient in hospital for a period of four days. The amounts granted by the Tribunal towards pain and suffering, attender charges, extra nourishment and damages to cloth are meagre. The same are enhanced to Rs.25,000/-, Rs.20,000/-, Rs.20,000/- and Rs.3,000/- respectively. The Tribunal considering the medical and transportation bills produced as Ex.P8, granted a consolidated sum towards medical and transportation charges. The same is set aside and a sum of Rs.40,000/- is granted towards medical expenses and a sum of Rs.10,000/- is granted towards transportation charges. The amount granted by the Tribunal towards loss of amenities is just and reasonable and the same is 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	40,500/-	67,500/-	enhanced
2.	Pain and suffering	10,000/-	25,000/-	Enhanced
3.	Loss of amenities	10,000/-	10,000/-	Confirmed
4.	Medical expenses and transportation	44,533/-	-	Set aside
5.	Medical expenses	-	40,000/-	Granted
6.	Transportation	-	10,000/-	Granted
7.	Extra nourishment	5,000/-	20,000/-	enhanced
8.	Attender charges	7,500/-	20,000/-	Enhanced
9.	Damages to clothes	500/-	3,000/-	enhanced



Total	1,18,033/-	1,95,500/-	Enhanced by Rs.77,467/-
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10. In the result, the appeal is partly allowed and award granted by the Tribunal at Rs.1,18,033/- is enhanced to Rs.1,95,500/- along with interest and costs. The appellant is directed to pay the necessary Court fee, if any for the enhanced award amount now determined by this Court. The 2nd respondent is 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.176 of 2017. 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(CS III)

//True Copy//

Sub Assistant Registrar

gsa

To

The Special Subordinate Judge No.2,
(Motor Accident Claims Tribunal),
Salem.

+2cc to Mr.C.Paraneedharan, Advocate Sr.32346
+1cc to Mr.J.Chandran, Advocate Sr.31755

C.M.A.No.2088 of 2019

nmI[co]
srg 11/10/2019