



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 4561 of 2019

Mallesh

.. Appellant/Petitioner

Vs.

1.Narasimma

2.The Regional Manager,
Bajaj Alliance Company Limited,
G.E. Plaza,
Airport Road, Yerwada,
Pune 411 006.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 18.08.2014, made in M.C.O.P.No.25 of 2013, on the file of the Sub Court, (Motor Accident Claims Tribunal), Hosur.

For Appellant : Mr. T. Panchatsaram

For Respondents: Mr. E. Rajadurai (for R2)
for M/s. M.B. Gopalan Associates
R1 - Not Ready in Notice

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 18.08.2014, made in M.C.O.P.No.25 of 2013, on the file of the Sub Court, (Motor Accident Claims Tribunal), Hosur.

2.The appellant is the claimant in M.C.O.P.No.25 of 2013, on the file of the Sub Court, (Motor Accident Claims Tribunal), Hosur. 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 24.02.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has 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 as insurer of the vehicle to pay a sum of Rs.5,04,468/- as compensation to the appellant.



4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 18.08.2014, made in M.C.O.P.No.25 of 2013, the appellant has come out with the present appeal.

5. Learned counsel appearing for the appellant contended that the appellant was working in a Petrol Bunk at Hosur and was earning a sum of Rs.9,000/- per month. Due to the accident, he suffered grievous injuries all over the body and could not continue the work as he was doing earlier. The Tribunal ought to have adopted multiplier method in awarding compensation towards future loss of income. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. The Tribunal ought to have considered the nature of injuries and the treatment taken towards it and awarded more compensation towards pain and suffering, future medical expenses, transportation charges and extra nourishment. In any event, the total compensation granted by the Tribunal is meagre and prayed for enhancement of the compensation.

6. Per contra, learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal, in the absence of any medical evidence to prove that the appellant suffered functional disability due to the accident, considering the injuries sustained by him, has fixed the disability of the appellant as 30% and awarded a sum of Rs.90,000/- towards disability, by awarding a sum of Rs.3,000/- per percentage. Hence, he is not entitled for compensation by adopting multiplier method. The amounts awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

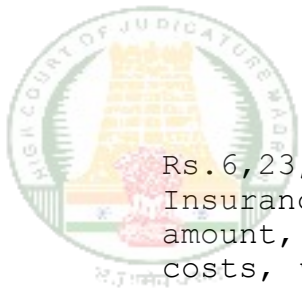
8. From the materials on record, it is seen that in the accident, the appellant suffered severe injuries all over the body, underwent surgery, his left leg was amputated and fully removed at ankle level. He has taken treatment as in-patient in Sreenivasa Hospital, Bangalore from 24.02.2011 to 14.03.2011, in Ashoka Hospital, Hosur from 20.03.2011 to 24.03.2011 and subsequently from 25.03.2011 to 06.04.2011, in three different spells. The Tribunal has not awarded any amount towards attendant charges. Considering the period of treatment taken by the appellant, a sum of Rs.35,000/- is awarded towards the attendant charges. Though the appellant claim that he was working in a Petrol Bunk and earning a sum of Rs.9,000/- per month. He failed to substantiate the same. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal has fixed a sum of Rs.3,000/- per month



as notional income, which is very meagre. The accident is of the year 2011. Considering the date of accident and the age of the appellant, a sum of Rs.7,000/- per month is fixed as the notional income of the appellant. Due to the accident, he would not have worked atleast for a period of 12 months. Hence, the amount awarded by the Tribunal towards loss of income is enhanced to Rs.84,000/-, (Rs.7,000/- x 12). The appellant has contended that he has suffered functional disability, but he has failed to prove the same. In the absence of any material evidence, considering the nature of injuries, the Tribunal fixed the disability of the appellant as 30% and awarded a sum of Rs.90,000/- by awarding a sum of Rs.3,000/- per percentage of disability, which is proper. The Tribunal has awarded meagre amount towards transportation charges and extra nourishment. Hence, the same is enhanced to Rs.10,000/- towards transportation charges and Rs.20,000/- towards extra nourishment. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, 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.	Partial permanent disability	90,000/-	90,000/-	Confirmed
2.	Pain and suffering	20,000/-	20,000/-	Confirmed
3.	Medical expenses	2,64,468/-	2,64,468/-	Confirmed
4.	Extra nourishment	10,000/-	20,000/-	Enhanced
5.	Loss of income	18,000/-	84,000/-	Enhanced
6.	Transportation	2,000/-	10,000/-	Enhanced
7.	Attendant charges	-	35,000/-	Granted
8.	Future loss of income	1,00,000/-	1,00,000/-	Confirmed
	Total	5,04,468/-	6,23,468/-	Enhanced by Rs.1,19,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.5,04,468/- is enhanced to



Rs.6,23,468/- along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, 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. 25 of 2013. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.1,19,000/-. No costs.

Sd/-
Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

gsa

To

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

Copy To

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

+1cc to M/s. M.B. Gopalan Associates, Advocate SR.No.106749

+1cc to Mr.G.Punniyakotti, Advocate SR.No.106648

C.M.A.No. 4561 of 2019

PM(CO)
GMY(20/09/2021)