

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.605 of 2018

Kamal Kumar @ Kamala Kumar .. Appellant/Petitioner

Vs.

1.P.Selvam

(R1 remained exparte before the Tribunal his presence may be dispensed with)

2.The United India Insurance Co. Ltd.,
Divisional Office,
No.73-C, MTH Road,
Ambattur,
Chennai - 600 053.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.12.2012 made in M.C.O.P.No.67 of 2008 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Ponneri.

For Appellant : Ms.A.Subadra
for Ms.M.Malar

For R2 : Mr.J.Michael Visuvasam

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 07.12.2012 made in M.C.O.P.No.67 of 2008 on the file of the Motor Accident Claims Tribunal, IV Additional District Judge, Ponneri.

2.By consent of both parties, 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.67 of 2008 on the file of the Motor Accident Claims Tribunal, IV Additional District Judge, Ponneri. He filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.10.2007. 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 Mahindra van belonging to 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.11,01,400/- 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 sustained fractures and grievous injuries all over the body. The appellant has taken treatment as in-patient at Sundaram Medical foundation Hospital from 30.10.2007 to 12.12.2007 and continued treatment as out-patient from 30.04.2008 to 10.05.2008. P.W.2 - Doctor assessed the disability of the appellant at 95%. The appellant was working as a Telephone operator at Shring Baking System Pvt Limited and was earning a sum of Rs.7,000/- per month. The Tribunal without appreciating the disability suffered by the appellant, has erroneously fixed a sum of Rs.3,000/- per month towards income. The Tribunal has not awarded any amount towards future medical expenses and prayed for enhancement of compensation.

5.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant has not filed any documents to prove that he sustained multiple injuries. In the absence of any materials, the Tribunal has fixed monthly income of the appellant at Rs.3,000/- per month which is not meagre and the amounts awarded by the Tribunal under different heads are excessive and the appellant is not entitled for any enhancement of compensation and prayed for dismissal of the appeal.

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

7.From the materials available on record, it is seen that the appellant was aged 29 years at the time of accident. The Tribunal applied multiplier of '17'. The accident is of the year 2007. The appellant has contended that he was working as a Telephone operator at Shring Baking System Pvt Limited and was earning a sum of Rs.7,000/- per month. The appellant has taken

treatment as in-patient at Sundaram Medical foundation Hospital from 30.10.2007 to 12.12.2007 and continued treatment as out-patient from 30.04.2008 to 10.05.2008. P.W.2 - Doctor assessed the disability of the appellant at 95%. In the absence of any materials, to prove the said contentions, the Tribunal has fixed monthly income of the appellant at Rs.3,000/- per month, which is meagre and monthly income of the appellant is fixed at Rs.6,500/- per month including future prospects. The amount granted by the Tribunal towards permanent disability is modified to Rs.12,59,700/- (6,500 x 12 x 17 x 95/100). The Tribunal has not awarded any amounts towards attendant charges, loss of amenities and future medical expenses. A sum of Rs.50,000/- is granted towards attendant charges, Rs.30,000/- is granted towards loss of amenities and Rs.50,000/- is granted towards future medical expenses. The appellant is granted a sum of Rs.1,62,500/- for 25 months at Rs.6,500/- per month as the appellant has taken treatment in the hospital as in-patient from 30.10.2007 to 12.12.2007 and as out-patient from 30.04.2008 to 10.05.2008. The amounts awarded by the Tribunal under other heads 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.	Pain and sufferings	40,000	40,000	Confirmed
2.	Extra nourishment	30,000	30,000	Confirmed
3.	Medical expenses	4,50,000	4,50,000	Confirmed
4.	Loss of earning (25 x 6,500)	-	1,62,500	Granted
5.	Permanent disability	5,81,400	12,59,700	Enhanced
6.	Attendant charges	-	50,000	Granted
7.	Loss of amenities	-	30,000	Granted
8.	Future medical expenses	-	50,000	Granted

	Total	Rs.11,01,400/-	Rs.20,72,200/-	Enhanced by Rs.9,70,800/-
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8. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.11,01,400/- is hereby enhanced to Rs.20,72,200/- 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(CCC)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The IV Additional District Judge,
Motor Accidents Claims Tribunal,
Ponneri.

2.The Section Officer,
VR Section, High Court, Madras.

+1 cc to M/s.M.Malar, Advocate, Sr.No. 24107

+1 cc to Mr.J.Michael Visuvasam, Advocate, Sr.No. 24071

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RJI (CO)
CSL/22.07.2019