

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.3623 OF 2019

Raja @ Easu Raja

.. Appellant/Claimant

Vs.

1. Hariharan

2. The Divisional Manager,
The United India Insurance Company Limited,
TP Claims Hub, No.81, Katpadi Road,
T.K.M.Complex, 2nd Floor,
Vellore.

.. Respondents/
Respondents

(R1-Exparte before the Tribunal)

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.10.2017 made in M.C.O.P.No.303 of 2016 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Tiruvannamalai.

For Appellant : M/s.A.Subadra

For Respondents : Mr.S.Arunkumar for R2
R1 Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 30.10.2017 made in M.C.O.P.No.303 of 2016 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Tiruvannamalai.

2.The appellant is the claimant in M.C.O.P.No.303 of 2016 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Tiruvannamalai. He filed the above 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 31.10.2015.

3.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 bearing Registration No.TN 30 AB 0820 belonging to the first respondent and directed the second respondent, as insurer of the vehicle to pay a sum of Rs.65,000/- as compensation to the appellant.

4.Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the Tribunal without properly considering the evidence of the appellant as PW.1 and PW.2 the Doctor, who assessed the disability, awarded meagre amount as compensation. Though the appellant has marked Exs.P2 to P7 to prove the nature of injuries and treatment taken by him in Medical College Hospitals in Tiruvannamalai and Villupuram, the Tribunal erred in holding that there was no nexus for the injuries sustained in the accident and pseudo-aneurysm. The Medical Board failed to consider various injuries sustained by the appellant and has given report stating that the appellant has not suffered any disability even though admitted the nature of injuries as grievous injuries, which has to be rejected. The Tribunal ought to have awarded more compensation under the heads of pain and sufferings, loss of earning and extra nourishment. The Tribunal has not awarded any amounts towards medical expenses, future medical expenses, transportation, attendant charges, loss of amenities, mental agony and loss of earning capacity and prayed for enhancement of compensation.

6.Per contra, Mr.S.Arunkumar, learned counsel appearing for the second respondent contended that the appellant was referred to Medical Board and the Medical Board, after examining the appellant, issued certificate stating that the appellant suffered nil disability. The appellant summoned the Chairman of the Medical Board and one of the Member of the Medical Board, who were examined as PW.2 and PW.3 respectively. They deposed about examination made by them and also by Tiruvannamalai Medical College Hospital and Government Hospital, Chennai. Nature of injuries sustained by the appellant in the accident and compensation awarded by the Tribunal, is just compensation

and the appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel for the appellant as well as the learned counsel for the second respondent/Insurance Company and perused the entire materials on record.

8. From the award of the Tribunal, it is seen that the Tribunal has awarded a compensation of Rs.65,000/- under three heads. The Tribunal has not granted compensation separately for the injuries sustained by the appellant and for pain and sufferings. Considering the nature of injuries, treatment taken by the appellant as in-patient, the Tribunal awarded a sum of Rs.50,000/- for the injuries sustained and for pain and sufferings. The appellant has taken treatment as in-patient from 31.10.2015 to 06.11.2015 at Government Tiruvannamalai Medical College and Hospital. The Tribunal has awarded a sum of Rs.50,000/- towards injuries and pain and sufferings, which is meagre and the same is hereby enhanced to Rs.1,00,000/-. The Tribunal has not granted any amount towards attendant charges and transportation. Hence, a sum of Rs.10,000/- each is awarded towards attendant charges and transportation. The Tribunal awarded a meagre sum of Rs.5,000/- towards extra nourishment and the same is hereby enhanced to Rs.10,000/-.

9. From the materials on record, it is seen that the Medical Board has certified that the appellant has not sustained any disability as evident from the evidence of PW.2 and PW.3. Since, the ailment is not connected with the accident, the appellant is not entitled for medical expenses as per Exs.P.12 and P.13. The amount awarded by the Tribunal towards loss of earning during the treatment period is hereby confirmed. According to the appellant, he was working as a coolie and was earning a sum of Rs.15,000/- per month. The appellant has failed to prove the same. Considering the nature of injuries and period of treatment, the Tribunal has awarded a sum of Rs.10,000/- as compensation towards loss of earning during the treatment period. The accident occurred in the year 2015. The monthly income of the appellant is fixed at Rs.8,000/-. Considering the nature of injuries and period of treatment, the appellant would not have attended work for atleast two months. The Tribunal has awarded a sum of Rs.10,000/- towards loss of earning, which is meagre and the same is hereby enhanced to Rs.16,000/- (Rs.8,000/- x 2). 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.	For the injuries sustained and for pain and sufferings	50,000/-	1,00,000/-	enhanced
2.	Loss of earning during the treatment period	10,000/-	10,000/-	confirmed
3.	Transportation	-	10,000/-	granted
4.	Extra nourishment	5,000/-	5,000/-	confirmed
5.	Attender charges	-	10,000/-	granted
6.	Loss of income	-	16,000/-	granted
	Total	Rs.65,000/-	Rs.1,51,000/-	enhanced by Rs.86,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.65,000/- is hereby enhanced to Rs.1,51,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent 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 is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

sd/-

Assistant Registrar(CO-MDU)

//True Copy//

Sub Assistant Registrar

vkr

To

1. The Motor Accident Claims Tribunal,
Special Subordinate Court,
Tiruvannamalai.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.106450

+1cc to M/s.M.Malar, Advocate, S.R.No.105766

C.M.A.No.3623 of 2019

VD(CO)
CS/15/12/2020



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