

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.630 of 2018

Sakthivel

.. Appellant/ Petitioner

Vs.

1.S.A.Swarnapriya Fire Wood Agencies, Erode.

2.The Manager, Oriental Insurance Company Ltd,
2nd Floor, S.K.S.Pilaza, Near Police Station,
Perundurai, Erode - 638 053. ... Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.09.2014 made in M.C.O.P.No.40 of 2013 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Namakkal.

For Appellant : Ms.T.Gayathri
for Mr.C.Kulanthaivel

For R2 : Mr.D.Bhaskaran

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 10.09.2014 made in M.C.O.P.No.40 of 2013 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Namakkal.

2.The appellant is claimant in M.C.O.P.No.40 of 2013 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Namakkal. 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 07.10.2012. 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 lorry belonging to the 1st respondent and directed both 1st respondent as well as the 2nd-respondent Insurance Company to pay a sum of Rs.5,05,347/- as compensation to the appellant, jointly and severally. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellant contended that the Tribunal without considering the nature of injuries suffered by the appellant awarded meagre amount of Rs.5,05,347/- as compensation. The appellant has examined himself as PW1 and deposed that he was working as a labourer in Lorry Body Building workshop and was earning a sum of Rs.15,000/- per month. Due to the injuries he suffered 55% permanent disability and proved that he could not work as he was doing earlier. The appellant has examined P.W.2-Doctor and proved the disability and injuries suffered by him. The Tribunal erroneously reduced the percentage of disability from 55% to 30% and granted lesser amount compensation for permanent disability. The appellant has taken treatment in hospital as in-patient from 07.10.2012 to 08.11.2012 for 33 days and subsequently from 29.12.2012 to 03.01.2013 for 6 days and underwent surgery. The appellant has examined P.W.3-employee of the appellant to prove his avocation and income. The Tribunal erroneously fixed meagre sum of Rs.5,000/- per month and granted lesser compensation and prayed for enhancement of compensation.

4.Per contra, Mr.D.Bhaskaran, learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the nature of injuries and disability certificate to whole body reduced percentage of disability to 25% and applied multiplier method. The monthly income fixed by the Tribunal is not meagre and the appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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

6.From the materials available on record, it is seen that the appellant has contended that he was working as a labourer in Lorry Body Building workshop and was earning a sum of Rs.15,000/- per month. The accident is of the year 2012, the monthly income fixed by the Tribunal is meagre. A sum of Rs.7,500/- is fixed as monthly income and the amount granted by the Tribunal is modified to Rs.2,47,500/- (7,500 x

12 X 11 x 25/100). The amount awarded by the Tribunal towards nutrition is meagre and the same is hereby enhanced to Rs.10,000/-. The Tribunal has not awarded any amount towards attendant charges, loss of amenities, future medical expenses and damages to cloth. A sum of Rs.20,000/- is granted towards attendant charges, Rs.20,000/- is granted towards loss of amenities, Rs.15,000/- is granted towards future medical expenses and Rs.2,000/- is granted towards damages to cloth. The amounts awarded by the Tribunal under other heads 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 loss of earning	20,000	20,000	Confirmed
2.	Transport to hospital	10,000	10,000	Confirmed
3.	Nutrition	3,000	10,000	Enhanced
4.	Medical expenses	2,97,347	2,97,347	Confirmed
5.	Permanent disability	1,65,000	2,47,500	Enhanced
6.	Pain and sufferings	10,000	10,000	Confirmed
7.	Attendant charges	-	20,000	Granted
8.	Loss of amenities	-	20,000	Granted
9.	Future medical expenses	-	15,000	Granted
10.	Damages to cloth	-	2,000	Granted
	Total	Rs.5,05,347/-	Rs.6,51,847/-	Enhanced by Rs.1,46,500/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,05,347/- is hereby enhanced to Rs.6,51,847/- 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. Both 1st respondent as well as the 2nd-respondent Insurance Company are 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. However, it is made clear that the appellant is not entitled for interest for the delay period on the amount enhanced by this Court. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mtl

To

The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Namakkal.

Copy to:

The Section Officer,
V.R. Section,
High Court, Madras. (2 Copies)

+1cc to Mr.D.Bhaskaran, Advocate SR.No. 26048

+1cc to Mr.C.Kulanthaivel, Advocate SR.No. 25842

C.M.A.No.630 of 2018

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A.SK(27/09/2019)

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