

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2690 of 2019

Sampath

.. Appellant/ Petitioner

Vs.

1.Elangovan

2.Cholamandalam MS General Insurance Co., Ltd.,
Dare House, 2nd Floor, No.2,
N.S.C.Bose Road,
Chennai - 600 001.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.01.2019 made in M.C.O.P.No.27 of 2014 on the file of Motor Accident Claims Tribunal, Sub Court, Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran
For R2 : M/s.M.B.Gopalan Associates

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 28.01.2019 made in M.C.O.P.No.27 of 2014 on the file of Motor Accident Claims Tribunal, Sub Court, Tiruchengode.

2.The appellant is claimant in M.C.O.P.No.27 of 2014 on the file of Motor Accident Claims Tribunal, Sub Court, Tiruchengode. 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 13.08.2013. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by

the driver cum owner of the Tarus Lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.63,766/- 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.

3.The learned counsel appearing for the appellant contended that the Tribunal has awarded a meagre sum without observing the circumstances of the case and the principles for awards in similar cases. The finding of the Tribunal is that the accident occurred due to rash and negligent driving on the part of the driver of the 1st respondent. The award made by the Tribunal is on the meagre side. Further contended that the petitioner was working as a Sub Inspector and was earning a sum of Rs.30,000/- per month at the time of accident. Due to the accident, the petitioner sustained grievous injuries and fracture at right maxilla, right mandibular and left leforte II. He has taken treatment in Hospital as in-patient from 17.08.2013 to 27.08.2013 nearly for 11 days. He also underwent surgeries multiple plate and screws were fixed to him. Even after discharged from the Hospital the petitioner could not do his work as before. He lost his entire earning power and till he is going to hospital for further treatment and periodical check up. The Tribunal has not awarded any sum under the heads of loss of income, future medical expenses, transport expenses, loss of amenities and attender charges. The Tribunal has not considered all these aspects and awarded very meagre sum as compensation under various heads and prayed for enhancement of compensation.

4.Per contra, learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal after considering both oral and documentary evidence in proper perspective, has awarded compensation which is not excessive and prayed for dismissal of the appeal.

5.Heard Mr.T.S.Arthanareeswaran, learned counsel appearing for the appellant as well as M/s.M.B.Gopalan Associates, learned counsel appearing for 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 Tribunal by observing the contentions raised by both side and has given a finding that the accident occurred due to rash and negligent driving on the part of the 1st respondent's vehicle. While determining the compensation as claimed by the claimant, the Tribunal has verified Ex.P4/accident register, Ex.P5/discharge summary, Ex.P6/medical bills, Ex.P8/wound certificate and the nature of injuries are all described by the PW2/Doctor. There are nearly ten injuries sustained by the

appellant. It is observed that there are three fractures at right maxilla, right mandibular and left leforte II. The documents relating to period of treatment as in-patient also supported by the documents i.e. Ex.P5/discharge summary which reveals the fact that he was under treatment from 17.08.2013 to 27.08.2013 nearly for 11 days. The grievance of the appellant is that inspite of the evidence as well as the documents, regarding the nature of injuries and the disability sustained by him are very much spoken by PW2/Doctor. The Tribunal has not considered the aspect of disability when the injuries are such that and the disability sustained by the appellant is also huge. On the other hand, the Medical Board has given a finding to the aspect of the disability and it has clearly stated that Ex.C.1 is the report of the Medical Board which says that there is no disability sustained by the appellant. Hence the contentions of the respondent is that in the absence of any evidence and documents the award made by the Tribunal under the said heads are very much reasonable. Hence the appellant is not entitled for enhancement towards disability. The appellant was under treatment as in-patient for reasonable time and the surgeries also done to him. The Tribunal has not awarded any sum towards attendant charges, loss of amenities and future medical expenses and hence this Court awards a sum of Rs.10,000/- each respectively under those heads. The sum awarded by the Tribunal under other heads are properly considered and does not require any modification. 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)
1.	Medical expenses	Rs.28,766/-	Rs.28,766/-
2.	Pain and suffering	Rs.25,000/-	Rs.25,000/-
3.	Extra nourishment	Rs.10,000/-	Rs.10,000/-
4.	Attendant charges	-	Rs.10,000/-
5.	Loss of amenities	-	Rs.10,000/-
6.	Future medical expenses	-	Rs.10,000/-
	Total	Rs.63,766/-	Rs.93,766/-

7.In the result, this Civil Miscellaneous Appeal is partly

allowed and the compensation awarded by the Tribunal at Rs.63,766/- is enhanced to Rs.93,766/- together along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No costs.

8.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.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruchengode.

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

+lcc to Mr.C.Paraneedhidharan , Advocate SR.No. 74434

+lcc to Mr.M.B.Goapalan , Advocate SR.No. 76890

mtl

A.SK(27/02/2020)

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