

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2687 of 2019

Kumar

... Appellant

Vs

1.Vadivel

2.The United India Insurance Co., Ltd.,

Divisional Office, No.2,

Dr.Sankaran Road, Namakkal.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.03.2019 made in M.C.O.P.No.587 of 2017 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

For Appellant : Mr.T.S.Arthanareeswaran
For R2 : Mr.C.Paranthaman
For R1 : Exparte

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 20.03.2019 made in M.C.O.P.No.587 of 2017 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

2.The brief facts is as follows:

On 07.11.2016 at about 07.50 p.m. While the petitioner was riding a Pulsar bearing Reg.No.TN-34-S-8868 on the Sankari to Pallipalayam main road, near Pallipalayam Cheran Hospital, at the time a Maruthi Car bearing Reg.No.TN-28-L-5069 driven by its driver in a rash and negligent manner without noticing the traffic rules and hit against the petitioner's Pulsar Bike and caused the accident. Due to the said accident the petitioner

sustained grievous injuries and fractures. Thus the petitioner claimed a sum of Rs.4,00,000/- as compensation for the injuries sustained by him in the accident.

3.The 2nd respondent/Insurance Company denied the mode of accident as alleged in the claim petition. The respondent/Insurance Company contended that the accident occurred on 07.11.2016 at about 19.50 hrs but the complaint given on 09.11.2016 at about 15.00 noon. There was a delay of 3 days to lodge complaint by one Kumar before the Pallipalayam Police in the hospital and the police also registered the case in Crime.No.685/2016 for U/s.279 & 338 of IPC. Therefore it is concerned that the petitioner has not come by with clean hands and clear case. Further contended that the driver of the maruthi car driven by its driver slowly and diligently with following road traffic rules and regulations and the petitioner driven his vehicle with high speed and without following road traffic rules and regulations and unmindfully caused the accident.

4.The Tribunal after analysing the evidence and documents placed before the same and fixed the liability on the 1st respondent vehicle. While determining the sum claimed by the injured/appellant. The Tribunal observed the documents Ex.P5/wound certificate, Ex.P6/discharge summary and also the evidence of PW2/Doctor who issued disability certificate and assessed the income of the appellant at Rs.6,500/- per month and awarded a sum of Rs.2,94,100/- as compensation under the following heads:

Disability at 40%	Rs.1,20,000/-
Medical bills	Rs.1,39,589/-
Transportation charges	Rs.5,000/-
Loss of income for 3 months	Rs.19,500/-
Extra nourishment	Rs.5,000/-
Pain & suffering	Rs.5,000/-
Total	Rs.2,94,089/- is rounded off to Rs.2,94,100/-

Aggrieved against the said award the claimant has preferred this appeal for enhancement of compensation.

5.In the grounds of appeal, the appellant has contended that when it is the finding of the Tribunal that the negligence was on the part of the driver of the Maruthi Car and the sum awarded by the Tribunal which is very meagre against the principles rulings of the Hon'ble High Court as well as Hon'ble Supreme Court. Further, it is contended that the Tribunal has not considered the occupation of the appellant who was working as a Assistant Supervisor in M/s.Raja Guru Spinning Mills and

was earning a sum of Rs.12,000/- per month. At the time of accident, the appellant was aged 29 years, these aspects were not considered by the Tribunal. While determining the monthly income of the appellant apart from the fact that the wound certificate as well as discharge summary reveals the nature of injuries viz. 1.Comminuted displaced fracture of medial tibial condyle with depression (4mm) of the articular surface 2.High grade partial ACL tear 3.Complete tear of PCL 4. Avulsion of lateral collateral ligaments from its fibular attachment 5.Posterior root tear of medial meniscus with complex tear of posterior born. During the treatment period plate and screws were fixed. PW2/Doctor examined before the Tribunal and assessed the disability of the appellant at 40%. Due to the said accident the appellant could not do his work as before. So he lost his entire earning power. On the whole, the sum awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Heard Mr.T.S.Arthanareeswaran, learned counsel appearing for the appellant and Mr.C.Paranthaman, learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

7.On perusal of the records, it is seen that the claimant sustained injuries including fractures for which he himself deposed before the Tribunal along with documents Ex.P3/X-ray, Ex.P5/wound certificate and Ex.P6/discharge summary. The appellant also under went surgery for the said injuries and these aspects were very much proved by way of documents submitted by the claimant himself. PW2/Doctor assessed the disability of the appellant at 45% but the Tribunal has reduced the same to 40% and by awarding Rs.3,000/- per percentage calculating a sum of Rs.1,20,000/- towards disability (Rs.3,000/- x 40%) which this Court find it very reasonable and does not require any modification. Further, the income taken by the Tribunal at Rs.6,500/- per month is aggrieved by the petitioner, by stating that he was earning a sum of Rs.12,000/- per month as Assistant Supervisor in M/s.Raja Guru Spinning Mills and the same was not considered by the Tribunal.

8.On the other hand it is contended by the respondent that the appellant was treated only for 10 days as in-patient, whereas the Tribunal has awarded three months towards loss of income it is very excessive. The respondent further contended that there is no proof for income, occupation and no employer was examined from the said company, in which the claimant was working as a Assistant Supervisor. Though there is no sufficient proof for income, the Tribunal by considering the nature of injuries and the treatment undergone by him has awarded loss of income for 3 months by fixing the monthly income of the appellant at Rs.6,500/- is very much reasonable and further in the absence of any proof and does not require any

modification. The other grievance raised by the appellant is that the sum awarded by the Tribunal at Rs.5,000/- towards pain and suffering is very much meagre, without considering the fact that the appellant sustained grievous injuries, fracture and he also under went surgery. In view of the injuries sustained by the claimant, this Court is of the view that the sum awarded by the Tribunal towards pain and suffering to the tune of Rs.5,000/- requires modification. Accordingly, by taking into consideration Ex.P5/ wound certificate and Ex.P6/discharge summary, the sum awarded by the Tribunal towards pain and suffering is enhanced to Rs.10,000/-. It is seen from the award that the Tribunal has not awarded any amount towards attendant charges. This Court by considering the nature of injuries and the period of treatment taken by the appellant awards a sum of Rs.10,000/- towards attendant charges. Since the sum awarded under other heads are properly considered by the Tribunal, the same 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.	Disability	Rs.1,20,000/-	Rs.1,20,000/-
2.	Medical bills	Rs.1,39,589/-	Rs.1,39,589/-
3.	Transportation charges	Rs.5,000/-	Rs.5,000/-
4.	Loss of income	Rs.19,500/-	Rs.19,500/-
5.	Extra nourishment	Rs.5,000/-	Rs.5,000/-
6.	Pain and suffering	Rs.5,000/-	Rs.10,000/-
7.	Attender charges	-	Rs.10,000/-
	Total	Rs.2,94,089/- is rounded off to Rs.2,94,100/-	Rs.3,09,089/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,94,100/- is hereby enhanced to Rs.3,09,089/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

10.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 (Admin-II)

// True Copy//

Sub Assistant Registrar

mtl

To

1.The Additional District Judge,
Motor Accidents Claims Tribunal,
Namakkal.

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

+1cc to Mr.C.Paranthaman, Advocate, SR.No.64885.

+2cc to Mr.C.Paraneedharan, Advocate, SR.No.65118.

C.M.A.No.2687 of 2019

RSN(CO)
CSR: 05.02.2020

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