

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 4640 of 2019

Nandakumar

.. Appellant/Claimant

Vs.

1.Prakash

2.The Manager,

United India Insurance Co. Ltd.,

No. 2, Dr. Sankaran Road,

Namakkal Town.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 11.02.2019, made in M.C.O.P.No. 1521 of 2016, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Namakkal.

For Appellant : Mr. A. Sathish Kumar
for Mr. C. Thangaraju

For Respondents: Ms. C. Paranthaman (for R2)
R1:Ex-parte

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 11.02.2019, made in M.C.O.P.No. 1521 of 2016, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Namakkal.

2.The appellant is the claimant in M.C.O.P.No. 1521 of 2016, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Namakkal. He filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 08.03.2012.

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 Lorry belonging

to the 1st respondent and directed the respondents, to pay a sum of Rs.2,67,980/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 11.02.2019, made in M.C.O.P.No. 1521 of 2016, the appellant has come out with the present appeal.

5. Learned counsel appearing for the appellant contended that at the time of accident, the appellant, aged 35 years, was working as an Ambulance Driver and earning a sum of Rs.10,000/- per month. Due to the accident, the appellant sustained multiple grievous injuries. He has also undergone surgery and he is unable to do the work as he was doing earlier. P.W.2-Doctor assessed the disability of the appellant as 40%. Considering the nature of injuries and evidence of P.W.2-Doctor, the Tribunal ought to have adopted the multiplier '15' in awarding compensation towards loss of income, including 40% future prospects. The Tribunal has not awarded any amount towards future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6. Per contra, learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal, considering the nature of injuries sustained by the appellant and the evidence of P.W.2- Doctor regarding disability, awarded compensation towards disability by awarding Rs.3,000/- per percentage for 40% disability. The amounts awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7. Heard learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

8. It is the contention of the appellant that due to the accident, he suffered multiple grievous injuries and underwent surgery. He took treatment as in-patient in C.M. Hospital, Namakkal, from 13.03.2012 to 21.03.2012. P.W.2-Doctor has assessed the disability of the appellant as 40%. The appellant has marked the disability certificate issued by P.W.2-Doctor as Ex.P10. The Tribunal taking into consideration the evidence of P.W.2-Doctor and the disability certificate produced on record, granted a sum of Rs.1,20,000/- towards disability, by awarding a sum of Rs.3,000/- per percentage for 40% disability. The appellant failed to prove that he suffered functional disability. Hence, the compensation granted by the Tribunal for disability is just compensation. The Tribunal without

considering the period of treatment taken by the appellant, has not awarded any amount towards attendant charges. Considering the treatment taken by the appellant and discharge summary marked as Ex.P8, this Court awards a sum of Rs.15,000/- towards attendant charges. The appellant has contended that he was working as a Ambulance Driver and earning a sum of Rs.10,000/- per month. He failed to substantiate the same. In the absence of any material evidence to prove the same, the Tribunal fixed a sum of Rs.5,000/- per month as notional income of the appellant and awarded a sum of Rs.10,000/- towards loss of income for a period of two months. The same is meagre. The accident is of the year 2012. Considering the year of accident and the nature of work done by the appellant, a sum of Rs.9,000/- per month is fixed as notional income. Considering the nature of injuries and the period of treatment taken by him, the appellant would have not worked atleast for six months. Hence, a sum of Rs.54,000/- (Rs.9,000/- x 6) is awarded towards loss of income for a period of six months. The amounts awarded by the Tribunal towards extra nourishment and transportation expenses are meagre. The appellant is entitled to a sum of Rs.10,000/- towards transportation expenses and Rs.20,000/- towards extra nourishment. The Tribunal has not awarded any amount towards loss of amenities. The appellant has suffered fracture of tibia below knee in both legs. Considering the nature of injuries and the disability suffered by the appellant, this Court grants a sum of Rs.15,000/- towards loss of amenities. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same 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.	Permanent disability	1,20,000/-	1,20,000/-	confirmed
2.	Loss of income	10,000/-	54,000/-	Enhanced
3.	Transportation	5,000/-	10,000/-	Enhanced
4.	Extra nourishment	10,000/-	20,000/-	Enhanced
5.	Medical expenses	92,980/-	92,980/-	Confirmed
6.	Pain and suffering	30,000/-	30,000/-	Confirmed

7.	Attendant charges	-	15,000/-	Granted
8.	Loss of amenities	-	15,000/-	Granted
	Total	2,67,980/-	3,56,980/-	Enhanced by Rs.89,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.2,67,980/- is enhanced to Rs.3,56,980/- along with interest and costs. The respondents are directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No. 1521 of 2016. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gsa
To

1.The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal),
Namakkal.

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

+1cc to Mr.C.Paranthaman , Advocate SR.No. 10679

+2ccs to Mr.C.Thangaraju , Advocate SR.No. 106105

C.M.A.No. 4640 of 2019

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A.SK(10/11/2020)

20.12.2019



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