

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.08.2018

Delivered on : 01.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.2835 of 2017

R.Dinesh

... Appellant/ Petitioner

Vs

1.S.Satheeshkumar

2.C.Poongodi

3.United India Insurance Company Ltd.,
SRS Towers, 595, Mettur Main Road,
Erode - 638 301. ... Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, for enhancement of the award in the Judgment and Decree dated 10.04.2015 made in MCOP.No.106 of 2010 on the file of Motor Accident Claims Tribunal /IVth Additional District Court, Bhavani at Erode District.

For Appellant : Mr.MA.P.Thangavel

For Respondents: Mr.T.Ravichandran (for R3)

R1 & R2 - Exparte

JUDGMENT

Aggrieved by the award dated 10.04.2015 passed by the Tribunal in M.C.O.P.No.106 of 2010, the appellant/claimant have preferred this Civil Miscellaneous Appeal.

2.It is the case of grievous injury suffered by the injured claimant, who has 4th year student studied in the Kongu Engineering College in M.Sc. Software Engineering 5 years integrated course. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident happened due to rash and negligent driving of the first respondent driver and the second Respondent is owner of vehicle, since the second respondent vehicle was insured with the third respondent insurance company, the Tribunal held that the respondents 1 to 3 are jointly and severally liable to pay the compensation. Based on the pleadings and evidences the learned tribunal granted compensation under

following heads:-

Sl.No.	Head	Amount awarded by the Tribunal
1.	Loss of Earning capacity (Rs.2,000 x 54)	Rs.1,08,000/-
2.	Medical Bills	Rs.2,02,454/-
3.	Pain and Suffering	Rs.50,000/-
4.	Extra Nourishment	Rs.30,000/-
5.	Damages to cloths	Rs.5,000/-
6.	Loss of Education	Rs.50,000/-
	Total	Rs.4,45,454/-

3. Since negligence and liability are not disputed either of parties and only Quantum of compensation arrived by the tribunal is inadequate, hence this court not traversed with regard to negligence and Liability fixed by the tribunal are confirmed

4. The Learned Counsel for Appellant submitted that as per Exs.P5, P7, P8 and P13 to P15, and evidence of PW-4 there was head injuries, multiple fracture in hip and right Leg and Doctor has categorically deposed that due to the impact of the injuries there was dislocation of pelvic bone, fracture and there is mal Union of right side hip and acetabulum, femur fractures and the injured underwent seven surgery fixed steel and plate with 7 screws due to the injuries his right thigh about to 2 cm has been shortened and further it is the argued that due to the impact of the injuries the injured could not able to sit and stand more than 5 minutes and he cannot walk more than half kilometre and there is a swelling over the right thigh elbow hip and joint. Hence, appellant injured pray for enhancement of compensation with regard to loss of earning capacity and other conventional heads.

5. The Learned Counsel for the appellant further relying the evidence of the PW1 and PW4 Doctor, and argued that, it is a fit case to apply multiple method instead of granting Rs.2,000/- for one percentage of disability, since due to the impact of the injuries suffered by the appellant/ claimant was not able to attend the college for one year and he is not able to get any placement on par with other students, hence pray for enhancement of

compensation by applying multiplayer method and taking income as per the rulings of Megala Vs. Malathi and rulings of Hon'ble Division Bench of this Court.

6.Per contra, the learned counsel for the insurance company vehemently contented that the Tribunal by appreciating the entire evidences and granted compensation for one percentage as Rs.2,000/- and other heads also awarded in reasonably, hence he pray for dismissal of the appeal.

7.I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

8.On appreciating the entire evidence of the appellant though he suffered injuries in pelvis bone and mal union and shorting of legs about 2 cm, however he is able to complete his studies after 1 year and his disability assessed by the Doctor as 54% only partial permanent nature and that treated doctor have not been examined, hence, this Court unable to agree with the arguments of the counsel for the appellant.

9.It is relevant to point out that due to the impact of the injuries injured have some difficulty in getting job and to lead the life as like normal person and the accident happen during 2009, therefore the Tribunal taking Rs 2,000/- for one percentage is inadequate, this court deems fit to take as Rs.3,000/- for each percentage and there was a permanent disability of 54% x Rs.3,000/- =Rs.1,62,000/- is granted towards Loss of future earning capacity.

10.The learned counsel for appellant further argued that the evidence of PW3, who is the Deputy Registrar of Kongu Engineering College at Perundurai categorically revealed that due to the impact of injuries in the motor accident, the claimant could not able to complete the studies within 5 years, therefore again he joined in the fourth year and completed his studies by paying the tuition fees, College fees and he is not able to participate in the placement on par with other students. So, it would appropriate to enhance a sum of Rs.1,00,000/- in addition to Rs.50,000/- awarded by Tribunal under head of loss of execution for one year.

11.As stated supra, at the time of accident, the injured was aged 21 years. He would have earned more income, if he has not met with accident. Coming to the loss

of earning capacity during period of one year treatments, admittedly he is not able to attend the college to complete the courses within five years and taking note of the same, it is deem fit to grant a sum of Rs.10,000/ for period of 12 months , thus a sum of Rs.1,20,000/- awarded under loss of income during hospitalization and treatments.

12.The learned counsel for appellant draw the attention of this court that as per the Ex.P8 the appellant spent a sum of Rs.5,78,000/- towards medical expenses; but however a sum of Rs.3,77,180/- has been reimbursed by the State Bank of India and remaining amount of Rs.2,02,454/- has been only awarded, which is not correct and Tribunal ought to have award the entire medical bills , since there is a ceiling limit in the reimbursement for the family medical claim scheme issued by the employer of the appellants' father. In this regard my consider opinion that it is not the case of the appellant that the other family members are not able to utilized family medical claim scheme during the relevant period and suffered with any loss. Therefore, it cannot be any double compensation under the head of medical expenses; but however in my consider opinion that the nature of injuries and prolonging treatments and plate screw was inserted this could be fit case to grant a sum of One lakh under the head of future medical expenses as per rulings of the Hon'ble Apex Court reported in 2003 ACJ 12 in the case of Nagappa Vs. Gurudayal Singh.

13.That the tribunal failed to consider that as per the evidence of PW1 he was inpatient for four times in the Kovai Medical Centre Hospital at Coimbatore indifferent spells and underwent seven surgeries and he was inpatient more than 104 days and thereafter taking treatment in continues which was clearly proved through the medical records, therefore this court considering the pain and agony suffered by the injured claimant, it is deem fit to enhancing as a sum of Rs.50,000/-to a sum of Rs.1,00,000/- granted by Tribunal under the head of pain and suffering and mental agony.

14.As per the medical records it revealed that the injured is native of Bhavani Taluk, Erode district and he is taking treatment in the different spell at Kovai Medical Centre Hospital at Coimbatore and the Tribunal failed to award separate head under the transport to hospitals, considering the same this Court awarded a sum of Rs.50,000/- under separate head to the transport to hospital. As rightly pointed by the Learned counsel for the appellant that considering the prolong treatments and

nature of injuries the amount of Rs.30,000/- awarded under head of extra nourishment is very low and same has been enhanced to Rs.50,000/- and with regard to damage of cloths and articles the sum of Rs.5,000/- has been awarded by the Tribunal is confirmed.

15.The learned counsel for the appellant has placed his arguments that as per medical records and evidence of the PW1, there was a disfigurement in the face and hip and there was a deep wound in the right thigh in view of the same the Injured claimant could not walk in properly, taking paramount consideration it would be appropriate to award a sum of Rs.1,00,000/- towards loss of enjoyment and loss of amenities. The award of the Tribunal is modified and enhanced as follows:-

Sl. No.	Head	Amount awarded by this Court
1.	Loss of permanent disability (54% x 3,000/-)	Rs.1,62,000/-
2.	Pain and Suffering & Mental Agony	Rs.1,00,000/-
3.	Loss of enjoyment and amenities	Rs.1,00,000/-
4.	Extra Nourishment	Rs. 50,000/-
5.	Medical Bills as per Ex.P8	Rs.2,02,454/-
6.	Future Medical Expenses	Rs.1,00,000/-
7.	Damage towards cloth and articles	Rs. 5,000/-
8.	Loss of education for a period of one year	Rs.1,50,000/-
9.	Transport to Hospitals	Rs. 50,000/-
10.	Loss of income during the treatments	Rs.1,20,000/-
	Total	Rs.10,39,454/-

16.As stated supra, at the time of accident, the offending vehicle was insured with the third respondent insurance company. Therefore, the third respondent

insurance company is liable to pay compensation of Rs.10,39,454/- with interest at the rate of 7.5% per annum.

17.In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.4,45,454/- awarded by the Tribunal is enhanced to Rs.10,39,454/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

18.The appellant/claimant is directed to pay Court fee for the enhancement of compensation amount as awarded by this Court, if any. On payment of Court fee, the decree should be made ready. On such deposit, the appellant/claimant is permitted to withdraw enhanced award amount with accrued interest on filing application before the Tribunal, less amount if already withdrawn.

Sd/-

Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

vs
To

The Motor Accident Claims Tribunal /
IVth Additional District Court,
Bhavani at Erode District.

2. The section officer,
VR Section,
High court
Madras

+1cc to Mr.MA.P.Thangavel , Advocate SR.No.19635

+1cc to Mr.T.Ravichandran , Advocate SR.No. 19829

C.M.A.No.2835 of 2017

A.SK(30/04/2019)