

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 4588 of 2019

P. Jayaraman

.. Appellant/ Petitioner

Vs.

1.C. Duraipandian

2.The Division Manager,
National Insurance Co. Ltd.,
Do. No. 110, J.N. Street,
Puducherry.

.. Respondents/ Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 19.08.2019, made in M.C.O.P.No.185 of 2017, on the file of the 1st Additional Sub Court, (Motor Accident Claims Tribunal), Cuddalore.

For Appellant : Mr. S. Udayakumar

For Respondents: Mr. J. Chandran (for R2)

J U D G M E N T

This appeal has been filed seeking enhancement of the compensation granted by the award dated 19.08.2019, made in M.C.O.P.No.185 of 2017, on the file of the I Additional Sub Court, (Motor Accident Claims Tribunal), Cuddalore.

2.The appellant-claimant filed M.C.O.P.No.185 of 2017, on the file of the I Additional Sub Court, (Motor Accident Claims Tribunal), Cuddalore, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 23.10.2016.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.1,80,793/- as compensation to the appellant at the first instance and recover the same from the 1st respondent, owner of the vehicle.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 19.08.2019, made in M.C.O.P.No.185 of 2017, the appellant has come out with the present appeal.

5. Learned counsel appearing for the appellant contended that the appellant was an Agricultural Coolie and earning a sum of Rs.12,000/- per month. Due to the accident, he suffered fracture of left knee, fracture of hip bone and grade III B compound fracture at both bones and has taken treatment as in-patient in Government Hospital, Chidambaram and Rajah Muthiah Medical College Hospital, Chidambaram. Further, due to the accident and the injuries suffered, the appellant could not do the work as he was doing earlier. The Tribunal considering the nature of injuries, ought to have adopted multiplier method in granting compensation. The Tribunal failed to consider the medical bills for Rs.28,000/-. The amounts granted by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal, considering the fact that the injuries sustained by the appellant in the accident did not affect his earning capacity, has rightly held that the appellant is not entitled for compensation by applying multiplier method. The amounts awarded 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. From the materials on record, it is seen that due to the accident, the appellant suffered fracture of left knee, fracture of hip bone and grade III B compound fracture at both bones. The Medical Board has assessed 20% disability and the appellant has marked Disability Certificate as Ex.C1 to substantiate the same. The appellant was initially given first aid in Government Hospital, Chidambaram and later took treatment as in-patient in Rajah Muthiah Medical College Hospital, Chidambaram from 23.10.2016 to 12.12.2016. The Tribunal has granted only a meager sum of Rs.5,000/- towards attendant charges. Considering the period of treatment taken by the appellant for more than 1½ months, this Court awards a sum of Rs.40,000/- towards attendant charges. The appellant failed to produce any material evidence to show his avocation and he suffered functional disability and lost earning power. In view of the same, he is not entitled for

compensation by adopting multiplier method. The appellant claimed that he was earning a sum of Rs.12,000/- per month as an Agricultural Coolie, but he has not produced any materials to substantiate the same. The accident is of the year 2016. The notional income fixed by the Tribunal at Rs.6,500/- is meagre. The same is fixed at Rs.9,000/- per month. In view of the nature of injuries and the treatment taken by the appellant, he would not have worked atleast for eight months. Hence, the compensation awarded towards temporary loss of income is enhanced to Rs.72,000/- (Rs.9,000/- x 8 months). The amounts awarded by the Tribunal towards extra nourishment, pain and suffering and loss of amenities are meager. The same are enhanced to Rs.30,000/-, Rs.50,000/- and Rs.20,000/- respectively. The Tribunal has not awarded any amount towards loss of clothes. The appellant is entitled to a sum of Rs.3,000/- towards the said head. The amounts awarded by the Tribunal under different 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.	Partial permanent disability	60,000/-	60,000/-	Confirmed
2.	Transportation	12,000/-	12,000/-	Confirmed
3.	Extra nourishment	10,000/-	30,000/-	Enhanced
4.	Attender charges	5,000/-	40,000/-	Enhanced
5.	Medical charges	27,793/-	27,793/-	Confirmed
6.	Pain and sufferings, mental agony	30,000/-	50,000/-	Enhanced
7.	Loss of amenities	10,000/-	20,000/-	Enhanced
8.	Loss of clothes	-	3,000/-	Granted
9.	Temporary loss of income	26,000/-	72,000/-	Enhanced

	Total	1,80,793/-	3,14,793/-	Enhanced by Rs.1,34,000/-
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9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,80,793/- is enhanced to Rs.3,14,793/- along with interest and costs. The 2nd respondent Insurance Company is 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. 185 of 2017 at the first instance and recover the same from the 1st respondent, owner of the vehicle. 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 VIII)

//True Copy//

Sub Assistant Registrar

gsa
To

1. The I Additional Subordinate Judge,
(Motor Accident Claims Tribunal),
Cuddalore.

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

+1cc to Mr.S.Udaya kumar , Advocate SR.No. 103445
+1cc to Mr.J.Chandran , Advocate SR.No. 104182

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