

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4582 of 2019

Chandrasekaran

.. Appellant/Claimant

Vs.

1.Shakti

2.The United India Insurance Co. Ltd.,
Divisional Office, HUB
Ranga building
Peramanur Main Road
Peramanur, Salem-636 007. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.07.2019 made in M.C.O.P.No.94 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Salem.

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

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 09.07.2019 made in M.C.O.P.No.94 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Salem.

2.The appellant is claimant in M.C.O.P.No.94 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Salem. 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 12.08.2017. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 1st respondent, owner-cum-driver of the Mahindra car and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.2,86,567/- as

compensation to the appellant.

3. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

4. The learned counsel appearing for the appellant/claimant contended that the appellant was working as a gas cylinder delivery man and was earning a sum of Rs.10,000/- per month. In the accident, the appellant has sustained grievous injuries and fracture of left proximal tibia. He took treatment as in-patient from 12.08.2017 to 18.08.2017 in Dharan Hospital, Salem, underwent surgery, plate and screws were fixed and subsequently took treatment from 30.05.2018 to 01.06.2018 in Universal hospital for implant removal. The Medical Board examined the appellant and has assessed his disability at 25%. The disability certificate was marked as Ex.C1, which shows that the appellant has some difficulty in squatting, sitting crossed leg, pain at knee, limp while walking and deformity of knee. Due to the injuries, he could not do the work as he was doing earlier. The appellant is taking treatment till today and the Tribunal ought to have awarded compensation towards future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

5. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not produced any document to prove that he is taking treatment till today and therefore, he is not entitled to any compensation towards future medical expenses. The Tribunal after considering the materials available on record, has awarded just compensation. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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

7. From the materials available on record, it is seen that the appellant has contended that he was aged 46 years, working as a gas cylinder delivery man and was earning a sum of Rs.13,000/- per month. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.7,000/- as monthly income of the appellant and awarded a sum of Rs.42,000/- towards loss of income for a period of six months, which is meagre. The accident is of the year 2017 and the monthly income of the appellant is fixed as Rs.9,000/-. Considering the nature of injuries sustained by the appellant, he would not have attended his work for a period of ten months.

Hence, a sum of Rs.90,000/- (Rs.9,000/- X 10) is awarded towards loss of income for a period of ten months. According to the appellant, he has sustained fracture of left proximal tibia. He took treatment as in-patient from 12.08.2017 to 18.08.2017 in Dharan Hospital, Salem, underwent surgery, plate and screws were fixed and subsequently, admitted as in-patient from 30.05.2018 to 01.06.2018 in Universal hospital for removing implants. The appellant has produced Exs.P4 to P7/wound certificate, discharge summaries and medical bills to prove the same. The Medical Board examined the appellant and has assessed 25% disability. The disability certificate issued by the Medical Board was marked as Ex.C1. Due to the injuries, he could not do the work as he was doing earlier. Considering the nature of injuries sustained by the appellant and period of treatment taken by him, the amounts awarded by the Tribunal towards pain & suffering, transportation, extra nourishment, attendant charges and damage to clothes are meagre. Hence, a sum of Rs.50,000/-, Rs.10,000/-, Rs.20,000/-, Rs.20,000/- and Rs.3,000/- is awarded towards pain & suffering, transportation, extra nourishment, attendant charges and damage to clothes respectively. Though the appellant has contended that he is now taking treatment for his injuries, he has not produced any document to prove the same. Therefore, the appellant is not entitled to any compensation towards future medical expenses. The amounts awarded by the Tribunal under other heads are just and reasonable and the same are hereby 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 or reduced
1.	Permanent disability	75,000	75,000	Confirmed
2.	Pain & suffering	30,000	50,000	Enhanced
3.	Loss of amenities	30,000	30,000	Confirmed
4.	Medical bills	93,567	93,567	Confirmed
5.	Loss of income	42,000	90,000	Enhanced
6.	Transportation	5,000	10,000	Enhanced
7.	Extra nourishment	5,000	20,000	Enhanced
8.	Attendant charges	5,000	20,000	Enhanced

9.	Damage to clothes	1,000	3,000	Enhanced
	Total	2,86,567	3,91,567	Enhanced by Rs.1,05,000/-

8. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.2,86,567/- is hereby enhanced to Rs.3,91,567/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant shall 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. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Special Subordinate Judge No. II
The Motor Accident Claims Tribunal
Salem.

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

+1cc to Mr.C.Paranthaman, Advocate, S.R.No. 104253
+2cc to Mr.C.Paraneedharan, Advocate, S.R.No. 104555

C.M.A.No.4582 of 2019

GP(CO)
GN(15/10/2020)