

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4562 of 2019

Srinivasan

.. Appellant

Vs.

1.Udhayakumar

2.The United India Insurance Company Limited,
Divisional Office HUB, Ranga Building,
Peramanur Main Road, Peramanur,
Salem - 636 007.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.07.2019 made in M.C.O.P.No.2518 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Salem.

For Appellant : Mr.T.S.Arthanareeswaran

For R2 : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 05.07.2019 made in M.C.O.P.No.2518 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Salem.

2. By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3. The appellant is the claimant in M.C.O.P.No.2518 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Salem. He filed the above 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 27.06.2016.

4. 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 car belonging to the first respondent and directed the second respondent-Insurance Company to pay a sum of Rs.3,96,465/- as compensation to the appellant, at the first instance and recover the same from the first respondent/owner of the vehicle since the driver-cum-owner of the car did not possess valid driving license at the time of accident.

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

6. The learned counsel appearing for the appellant contended that the appellant was working as coolie in power loom and was earning a sum of Rs.20,000/- per month. The Tribunal erroneously fixed a sum of Rs.7,500/- as monthly income of the appellant, which is meager. The appellant suffered 25% permanent disability and the Tribunal ought to have adopted multiplier method for granting compensation towards permanent disability. The appellant has taken treatment in the hospital as in-patient for 15 days from 27.06.2016 to 11.07.2016 and the Tribunal has awarded meager sum of Rs.10,000/- each towards attendant charges, extra nourishment and the same needs to be enhanced. The compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7. Per contra, the learned counsel appearing for the second respondent contended that the appellant has not let in any evidence to prove that he was earning a sum of Rs.10,000/- per month. In the absence of evidence, the Tribunal fixed a sum of Rs.7,500/- as montly income of the appellant, which is not meager. The appellant has not proved that he suffered functional disability. Hence he is not entitled to compensation by applying multiplier mtehod. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

8. Heard the learned counsel appearing for the appellant as well as the second respondent and perused the entire materials on record.

9. From the materials available on record, it is seen that the appellant has contended that he was working as coolie in power loom and was earning a sum of Rs.20,000/- per month. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal has fixed a sum of Rs.7,500/- as notional monthly income of the appellant and

granted compensation towards loss of income for six months. The accident occurred in the year 2016. The monthly income fixed by the Tribunal is meager and hence, a sum of Rs.10,000/- is fixed by this Court as monthly income of the appellant. Considering the injuries, disability and treatment taken by the appellant, it is seen that he would not have worked atleast for a period of twelve months. He is entitled to compensation towards loss of income for twelve months. Therefore, the amount granted by the Tribunal towards loss of income is hereby enhanced to Rs.1,20,000/- [Rs.10,000/- X 12 months]. The appellant has taken treatment in the hospital as in-patient for 15 days from 27.06.2016 to 11.07.2016 and the Tribunal has awarded meager sum of Rs.10,000/- each towards attendant charges and extra nourishment. The same are meager. Hence, the amounts awarded by the Tribunal towards attendant charges and extra nourishment are enhanced to Rs.20,000/- and Rs.25,000/- respectively. The amount of Rs.1,000/- granted by the Tribunal towards loss of cloth is meager and the same is enhanced to Rs.3,000/-. The appellant has not proved that he suffered functional disability. Hence, he is not entitled to compensation by applying multiplier method. The amount awarded by the Tribunal under other heads are just and reasonable and hence they 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.	Disability	75,000/-	75,000/-	Confirmed
2.	Pain and suffering	30,000/-	30,000/-	Confirmed
3.	Attendant charges	10,000/-	20,000/-	Enhanced
4.	Extra nourishment	10,000/-	25,000/-	Enhanced
5.	Medical expenses	1,55,465/-	1,55,465/-	Confirmed
6.	Transportation	10,000/-	10,000/-	Confirmed
7.	Loss of income	45,000/-	1,20,000/-	Enhanced
8.	Loss of amenities	30,000/-	30,000/-	Confirmed
9.	Damage to cloth	1,000/-	3,000/-	Enhanced
10.	Future medical expenses	30,000/-	30,000/-	Confirmed

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
	Total	Rs.3,96,465/-	Rs.4,98,465/-	enhanced by Rs.1,02,000/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.3,96,465/- is hereby enhanced to Rs.4,98,465/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the Court fee if any, for the enhanced award amount now determined by this Court. The second 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, to the credit of M.C.O.P.No.2518 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Salem, at the first instance and recover the same from the first respondent/owner of the offending vehicle. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any already withdrawn, by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

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To

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

2.The Section Officer,
VR Section, High Court, Madras.

+2ccs to Mr.T.S.Arthanareeswaran, Advocate SR.No.101218

+1cc to Mr.J.Chandran, Advocate SR.No.101751

C.M.A.No.4562 of 2019

VSN II(CO)

GMV(07/05/2021)