

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4735 of 2019

M.Thangaraj

.. Appellant/ Petitioner

Vs.

1.M/s.Sathiyamangalam Traders,
D.No.22, Periyar Street,
T.N.Palayam Post,
Gobichettipalayam Taluk, Erode District.

2.United India Insurance Company Limited,
No.2, Dr Sankaran Road,
Namakkal Town and Taluk. . Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.05.2019 made in M.C.O.P.No.93 of 2014 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Namakkal.

For Appellant : Mr.R.Nalliyappan
For R2 : Mr.D.Bhaskaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 15.05.2019 made in M.C.O.P.No.93 of 2014 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Namakkal.

2.The appellant is the claimant in M.C.O.P.No.93 of 2014 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Namakkal. He filed the above 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 04.03.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the lorry belonging to the first respondent and directed the respondents 1 and 2, being the owner and insurer of the lorry to pay a sum of Rs.1,41,550/- as compensation to the appellant/claimant.

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

5. The learned counsel appearing for the appellant contended that P.W.2/Doctor assessed permanent disability of the appellant as 45% but the Medical Board assessed only 5% permanent disability. The Tribunal granted a sum of Rs.15,000/- towards disability by taking into account the percentage of disability assessed by the Medical Board, which is meagre. The Tribunal ought to have awarded compensation for 45% disability. The appellant was an agricultural coolie and was earning a sum of Rs.10,000/- per month. The Tribunal fixed the monthly income of the appellant at Rs.3,000/- and granted only a sum of Rs.6,000/- towards loss of income, which is very meagre. The appellant has taken treatment in the hospital as in-patient for 7 days from 06.03.2013 to 12.03.2013 and underwent surgery on 07.03.2013. The Tribunal has not granted any amount towards attendant charges, loss of amenities, loss of marital prospects and loss of cloth. The Tribunal ought to have applied multiplier method for granting compensation towards 45% disability. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, Mr.D.Bhaskaran, learned counsel appearing for the second respondent-Insurance Company contended that the appellant is not entitled to compensation by applying multiplier method as he has not proved that he suffered functional disability. The Tribunal did not accept the disability certificate issued by P.W.2/Doctor on the ground that P.W.2/Doctor has not given treatment to the appellant and rightly fixed the percentage of disability at 5% as assessed by the Medical Board. The reason given by the Tribunal for fixing 5% disability is proper. The appellant contended that he was an agricultural coolie and was earning a sum of Rs.10,000/- per month. Except oral evidence, he has not produced any documents to prove the same. In the absence of any documents with regard to avocation and income, the Tribunal rightly fixed a sum of Rs.3,000/- as notional income of the appellant per month, which is just and reasonable. The Tribunal has awarded a total sum of Rs.1,41,550/- as compensation to the appellant for 5% disability suffered by him. In view of the excess compensation granted by the Tribunal, the appellant is not entitled to any amount towards attendant charges, loss of amenities and loss of marital prospects. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

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

8. From the materials available on record, it is seen that P.W.2/Doctor assessed permanent disability of the appellant at

45% but the Tribunal did not accept the disability certificate issued by P.W.2/Doctor on the ground that P.W.2/Doctor has not given treatment to the appellant and referred the appellant to the Medical Board for assessing the percentage of disability. The reason given by the Tribunal for not accepting the disability certificate issued by P.W.2/Doctor is valid reason. The Medical Board assessed the disability of the appellant as 5% and accepting the same, the Tribunal awarded a sum of Rs.15,000/- towards 5% permanent disability at the rate of Rs.3,000/- per percentage of disability, which is not meagre. The appellant has not proved that he suffered functional disability and therefore he is not entitled to compensation by adopting multiplier method. The appellant contended that he was an agricultural coolie and was earning a sum of Rs.10,000/- per month. Except oral evidence, he has not produced any document to prove the same. In the absence of any document with regard to avocation and income, the Tribunal fixed a sum of Rs.3,000/- as notional income of the appellant per month. The accident occurred in the year 2013 and the appellant was aged 23 years at the time of accident. Considering the year of accident and age of the appellant, a sum of Rs.8,000/- is fixed by this Court as notional income of the appellant per month. Due to the injuries and disability suffered by him, he would not have worked atleast for a period of 6 months. Therefore, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.48,000/- [Rs.8,000/- X 6].

9. From the award passed by the Tribunal, it is seen that the appellant has taken treatment in the hospital as in-patient for 7 days from 06.03.2013 to 12.03.2013 and underwent surgery on 07.03.2013. The Tribunal has not granted any amount towards attendant charges, loss of amenities and loss of cloth. Therefore, considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.10,000/- each is granted by this Court towards attendant charges and loss of amenities. The appellant is also entitled for a sum of Rs.3,000/- towards damage of cloth. The amounts awarded by the Tribunal under other heads are 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.	Loss of income	6,000/-	48,000/-	Enhanced
2.	Disability	15,000/-	15,000/-	Confirmed
3.	Extra nourishment	10,000/-	10,000/-	Confirmed
4.	Transportation	5,000/-	5,000/-	Confirmed

5.	Pain and sufferings	30,000/-	30,000/-	Confirmed
6.	Medical expenses	75,550/-	75,550/-	Confirmed
7.	Attendant charges	-	10,000/-	Granted
8.	Loss of amenities	-	10,000/-	Granted
9.	Damage to cloth	-	3,000/-	Granted
	Total	Rs.1,41,550/-	Rs.2,06,550/-	enhanced by Rs.65,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,41,550/- is hereby enhanced to Rs.2,06,550/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 and 2 are 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.93 of 2014 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Namakkal. 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)

//True Copy//

Sub Assistant Registrar

krk

To

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

Copy to:

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

+1cc to Mr.R.Nalliyappan , Advocate SR.No. 104347

+1cc to Mr.D.Bhaskaran , Advocate SR.No. 104445

C.M.A.No.4735 of 2019

A.SK(07/08/2020)