

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3077 of 2018

Manikandan

.. Appellant / Petitioner

Vs.

1.Ramanathan

2.New India Assurance Co. Ltd.,
Jawharlal Nehru Street,
Pondicherry.

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.07.2017 made in M.C.O.P.No.34 of 2015 on the file of the Motor Accident Claims Tribunal, Sub Court, Kallakurichi.

For Appellant : Mr.K.Suryanarayanan

For R2 : Mr.M.Krishnamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 06.07.2017 made in M.C.O.P.No.34 of 2015 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Kallakurichi.

2.The appellant is the claimant in M.C.O.P.No.34 of 2015 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Kallakurichi. He filed the above said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.07.2014.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the bus

belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the vehicle to pay a sum of Rs.6,07,400/- as compensation to the appellant/claimant.

4. Not being satisfied with the award amount granted by the Tribunal 06.07.2017 made in M.C.O.P.No.34 of 2015, the appellant has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the appellant sustained grievous injuries in the accident and underwent many surgeries. He took treatment as in-patient from 02.07.2014 to 22.07.2014 and he has spent Rs.4,52,812/- towards medical expenses. The appellant was working as Fork Crane Operator in EMATCO Industrial PTE Ltd., Singapore and was earning a sum of Rs.80,000/- per month (\$1826 Singapore Dollar) and produced Ex.P5/pay certificate. The Tribunal on erroneous consideration rejected Ex.P5/pay certificate marked by the appellant. Due to the injuries sustained by the appellant, he could not do any work as he was doing earlier and he could not go to Singapore for his work. The Tribunal ought to have applied multiplier method and awarded compensation. The amounts awarded by the Tribunal towards pain and suffering, extra nourishment, transportation are meager and the Tribunal has not awarded any amount towards attender charges, loss of amenities, future medical expenses, damage to clothes and prayed for enhancement of compensation.

6. Per contra, Mr.M.Krishnamoorthy, learned counsel appearing for the second respondent-Insurance Company contended that the appellant has not let in any evidence to prove that he could not do any work and he is totally immobilized. Doctor has certified that the appellant suffered 30% disability. The Tribunal has correctly awarded compensation by adopting percentage method. The appellant also not proved the avocation and income by producing documentary evidence. The amounts awarded by the Tribunal under different heads are not meager and the appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. I have heard the learned counsel appearing for the appellant as well as the second respondent-Insurance Company and perused all the materials available on record.

8. From the materials on record, it is seen that the appellant was working as Fork Crane Operator in EMATCO Industrial PTE Ltd., Singapore. To substantiate the same, the appellant has produced Ex.P5/pay certificate and also produced Ex.P10/Passport, to prove that he was working in Singapore at the time of accident. The Tribunal rejected the amount mentioned in Ex.P5/pay certificate as the appellant did not examine the author of the said pay certificate. From the materials on record it is seen the respondents have not let in any evidence to disprove that the appellant was working in Singapore as Fork Crane Operator in EMATCO Industrial PTE Ltd. Considering the nature of injuries and surgeries underwent by the appellant, the contention of the learned counsel for the appellant that appellant could not do any work as he was doing earlier has considerable force. The accident occurred in the year 2014. The appellant was aged 28 years at the time of accident. Hence, the notional income fixed by the Tribunal at Rs.6,500/- is meager. Therefore, a sum of Rs.12,000/- is fixed as notional income of the appellant and applying multiplier of '17' for the age of 28 years, the amount awarded by the Tribunal towards loss of income is enhanced to Rs.7,34,400/- (Rs.12,000/- X 12 X 17 X 30/100). The Tribunal has awarded a sum of Rs.30,000/- towards pain and suffering, which is meager and the same is enhanced to Rs.50,000/-. A sum of Rs.10,000/- awarded by the Tribunal towards extra nourishment is meager and the same is enhanced to Rs.25,000/-. The appellant has taken treatment in the hospital as in-patient from 02.07.2014 to 22.07.2014. The Tribunal has not awarded any amount towards attender charges. Therefore, a sum of Rs.20,000/- has been awarded towards attender charges. The Tribunal has not awarded any amount towards loss amenities, loss of clothes and future medical expenses. Therefore, a sum of Rs.25,000/- towards loss of amenities, Rs.1,000/- towards loss of clothes and Rs.25,000/- towards future medical expenses are granted by this Court. The amounts awarded by the Tribunal under other heads 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	19,500/-	7,34,400/-	enhanced
2.	Permanent disability	90,000/-	90,000/-	confirmed
3.	Transportation	5,000/-	5,000/-	confirmed
4.	Extra Nourishment	10,000/-	25,000/-	enhanced

5.	Pain and Suffering	30,000/-	50,000/-	enhanced
6.	Medical expenses	4,52,812/-	4,52,812/-	confirmed
7.	Attender charges	-	20,000/-	granted
8.	Loss of Amenities	-	25,000/-	granted
9.	Loss of Cloth	-	1,000/-	granted
10.	Future medical expenses	-	25,000/-	granted
	Total	Rs.6,07,312/- rounded off to Rs.6,07,400/-	Rs.14,28,212/- rounded off to Rs.14,28,300/-	enhanced by Rs.8,20,900/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,07,400/- is hereby enhanced to Rs.14,28,300/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. 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. 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-VI)

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To

Sub Assistant Registrar

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Kallakurichi.
2. The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.5180
+1 cc to Mr.K.Suryanarayanan, Advocate, S.R.No.4970

C.M.A.No.3077 of 2018

RJI (CO)
SSM(23/05/2019)