

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.685 of 2020

Sundar

.. Appellant/ Petitioner

Vs.

1.Srinivasan

(1st Respondent Set-Exparte in Lower Court)

2.The Manager,

United India Insurance Co.Ltd.,

Puducherry.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 02.07.2019 made in M.C.O.P.No.119 of 2017 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Chidambaram.

For Appellant : Ms.P.T.Saleem Fathima

For R2 : Mrs.I.Malar

R1:Exparte in Lower Court

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 02.07.2019 made in M.C.O.P.No.119 of 2017 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Chidambaram.

2.The appellant is the claimant in M.C.O.P.No.119 of 2017 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Chidambaram. He filed the above claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 25.08.2017.

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 Tractor

and Tipper, belonging to the 1st respondent and directed the respondents 1 and 2 to pay a sum of Rs.2,93,906/- as compensation to the appellant.

4. Not being satisfied with the amounts 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 in the accident the appellant suffered grievous injuries and the Medical Board assessed the disability as 30%. The Tribunal has awarded only Rs.90,000/- towards disability by fixing a sum of Rs.3,000/- per percentage of disability. Due to the injuries, the appellant could not continue his work as he was doing earlier. The Tribunal ought to have adopted the multiplier method for granting compensation. He further submitted that at the time of accident, the appellant was working as an Accountant / Supervisor and was earning a sum of Rs.12,000/- per month. The Tribunal has fixed a meagre amount of Rs.6,250/- per month as monthly income of the appellant and awarded a very meagre compensation. Due to the injuries, the appellant had taken first-aid treatment at the Government Hospital, Chidambaram, and also in a Hospital at Arumbakkam, Chennai as in-patient for 7 days from 26.08.2017 to 01.09.2017 and he underwent surgery in his ankle. The Tribunal has not awarded any amount towards attendant charges & loss of amenities and amounts awarded by the Tribunal under different heads are meagre and therefore, prayed for enhancement of compensation.

6. Per contra, Mrs. I. Malar, learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not proved that due to injuries, he is totally immobilized and unable to do any work. The appellant failed to prove that he suffered functional disability. In the absence of any material evidence that he lost his earning power, the percentage method adopted by the Tribunal is proper and the appellant is not entitled for compensation, by applying multiplier method. The appellant has not made out any case for enhancement and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the second respondent/Insurance Company and perused the materials available on record.

8. The contention of the learned counsel appearing for the appellant is that in the accident, the appellant suffered fracture of two bones in the front portion of the left leg, bone fracture and swelling in the left leg foot and grievous injuries all over the body. The Medical Board certified that the

appellant suffered 30% of disability. The appellant has not proved that he is totally immobilized or he is disabled functionally and that he could not do any work as he was doing earlier. In such circumstances, the percentage method adopted by the Tribunal is proper. The accident took place on 25.08.2017. The Tribunal has granted only a sum of Rs.3,000/- per percentage of disability. This Court by judgment dated 09.01.2020 made in C.M.A.No.4870 of 2020 in the case of M/s.IFFCO TOKIO General Insurance Company Limited vs. Venkatesh and another, fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2017 and hence, the appellant is entitled to compensation at the rate of Rs.5,000/- per percentage of disability. Thus, the amount awarded by the Tribunal towards permanent disability is enhanced to Rs.1,50,000/- (Rs.5,000/- X 30% of disability). It is the contention of the appellant that at the time of accident, he was working as an Accountant / Supervisor and was earning a sum of Rs.12,000/- per month and marked Ex.P18-salary certificate to prove the same. But the appellant failed to examine the author of the document. Considering the age and nature of work the Tribunal fixed a sum of Rs.6,250/- per month as income of the appellant and awarded a sum of Rs.18,750/- (Rs.6,250/- X 3) towards loss of income which is not proper. The accident is of the year 2017 and hence, a sum of Rs.12,000/- is fixed as monthly income of the appellant. Thus, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.36,000/- (Rs.12,000/- X 3 months). According to the appellant, he has taken treatment as inpatient in hospital for 7 days. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the nature of injuries, period of treatment and percentage of disability, a sum of Rs.10,000/- each is granted towards attendant charges and loss of amenities. The amounts awarded by the Tribunal under other heads are just and reasonable and hence they 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
1.	Partial loss of Income	18,750/-	36,000/-	enhanced
2.	Disability	90,000/-	1,50,000/-	enhanced

3.	Pain & suffering	45,000/-	45,000/-	confirmed
4.	Extra nourishment	20,000/-	Rs.20,000/-	confirmed
5.	Transportation	10,000/-	Rs.10,000/-	confirmed
6.	Medical expenses	1,10,156/-	Rs.1,10,156/-	confirmed
7.	Attendant charges	-	10,000/-	granted
8.	Loss of Amenities	-	10,000/-	granted
	Total	Rs.2,93,906/-	Rs.3,91,156/-	enhanced by Rs.97,250/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,93,906/- is hereby enhanced to Rs.3,91,156/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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 order. 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. The appellant is directed to pay necessary Court fee, if any on the enhanced compensation. No costs.

gbi

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The II Additional District Judge,
Motor Accident Claims Tribunal, Chidambaram.

Copy to:

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

+1cc to M/s.I.Malar , Advocate SR.No. 17083

+1cc to Ms.P.T.Saleem Fathima , Advocate SR.No. 17109

C.M.A.No.685 of 2020

A.SK(21.01.2021)