

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1530 of 2006

V.S.Balaji

.. Appellant /Claimant

Vs.

1.V.Duraisamy

2.Kanagamani

3.The National Insurance Co. Ltd.

City Branch-1, II floor

Oppanakara street

Coimbatore-1.

.. Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.11.2004 made in M.C.O.P.No.1144 of 2002 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Erode.

For Appellant : Mr.Philip Ravindran

For Respondents : No appearance

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 24.11.2004 made in M.C.O.P.No.1144 of 2002 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Erode.

2.The appellant is claimant in M.C.O.P.No.1144 of 2002 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Erode. He filed the said claim petition claiming a sum of Rs.2,48,015/- as compensation for the injuries sustained by him in the accident that took place on 23.03.2002.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver of the

auto rickshaw belonging to the 2nd respondent and directed the respondents 1 & 2 & the 3rd respondent/Insurance Company being insurer of the said auto rickshaw, to jointly and severally pay a sum of Rs.17,500/- 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 the appellant was earning a sum of Rs.7,200/- per month by working as a medical transcriptionist in Heartland K.G. Information Services Private Limited, Coimbatore, at the time of accident. The appellant marked the salary slip as Ex.P9 to prove the income. The appellant spent a sum of Rs.45,925/- towards medical expenses. Even as per the medical bills, the Tribunal ought to have awarded a sum of Rs.14,160/- towards medical expenses. The appellant has taken treatment as in-patient in Dr.Vijayaraghava Nursing Home, K.G. Hospital, Coimbatore, from 23.03.2002 to 26.03.2002 and thereafter, in Erode Maruthi Medical Centre, from 14.08.2002 to 19.08.2002 and underwent plastic surgery. The Tribunal without appreciating the above materials, awarded only a lump sum amount of Rs.17,500/- as compensation to the appellant. Further, the motorcycle of the appellant was damaged in the accident. The Tribunal ought to have awarded compensation towards disability, loss of income during treatment period, transportation, extra nourishment, pain & suffering, damage to the vehicle and prayed for enhancement of compensation.

6. Though notice has been served on the respondents and their names are printed in the cause list, there is no representation on behalf of the respondents either in person or through counsel.

7. Heard the learned counsel appearing for the appellant and perused all the materials available on record.

8. It is the contention of the appellant that in the accident, he sustained grievous injuries on his face and underwent plastic surgery. The appellant has taken treatment as in-patient in Dr.Vijayaraghava Nursing Home, K.G. Hospital, Coimbatore, from 23.03.2002 to 26.03.2002 and thereafter, in Erode Maruthi Medical Centre, from 14.08.2002 to 19.08.2002. The appellant marked the hospital receipts as Exs.P7 & P8, which shows that he spent a sum of Rs.16,050/- and Rs.15,000/- respectively towards medical expenses. The Tribunal rejected Exs.P7 and P8 on the ground that the doctor, who treated the appellant, was not examined. The reason assigned by the Tribunal is not correct. As per Exs.P7 and P8, the appellant is entitled

to a sum of Rs.31,050/- (Rs.16,050/- + Rs.15,000/-) towards medical expenses.

8(i).Further, the appellant marked the payment receipt for the damages caused to the vehicle as Ex.P11 to show that he has paid a sum of Rs.5,000/- for repairing the motorcycle. Therefore, a sum of Rs.5,000/- is awarded towards damage to the vehicle.

8(ii).The appellant examined Doctor as P.W.3 to prove the injuries. P.W.3 in his evidence, has deposed that the injuries sustained by the appellant are simple in nature. The appellant has not produced any wound certificate or disability certificate to prove the injuries sustained by him in the accident. Therefore, the appellant is not entitled to any compensation towards disability. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.5,000/- each is awarded towards pain & suffering, attendant charges and extra nourishment and Rs.2,000/- is awarded towards damage to clothes.

8(iii).The appellant contended that he was earning a sum of Rs.7,200/- per month by working as a medical transcriptionist in Heartland K.G. Information Services Private Limited, Coimbatore, at the time of accident. The appellant marked the salary slip as Ex.P9 to prove the income. The Tribunal rejected Ex.P9 on the ground that author of Ex.P9 was not examined. The accident is of the year 2002 and hence, a sum of Rs.3,000/- is fixed as monthly income of the appellant. Due to the injuries, the appellant would not have attended his work atleast for a period of two months. Therefore, a sum of Rs.6,000/- (Rs.3,000/- X 2) is awarded towards loss of income during treatment period. In view of the above, the lumpsum amount of Rs.17,500/- awarded by the Tribunal as compensation to the appellant is hereby set aside. 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.	Lump sum amount	17,500	-	Set aside
2.	Medical expenses	-	31,050	Granted
3.	Damage to the vehicle	-	5,000	Granted
4.	Pain & suffering	-	5,000	Granted

5.	Attendant charges	-	5,000	Granted
6.	Extra nourishment	-	5,000	Granted
7.	Damage to clothes	-	2,000	Granted
8.	Loss of income during treatment period	-	6,000	Granted
	Total	17,500	59,050	Enhanced by Rs.41,550/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.17,500/- is hereby enhanced to Rs.59,050/- 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 necessary Court fee, if any, on the enhanced compensation. The respondents are directed to jointly and severally 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. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge
The Motor Accident Claims Tribunal
Erode.

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

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+1cc to Mr.Philip Ravindran Jesudoss, Advocate, S.R.No.20941

C.M.A.No.1530 of 2006

AD(CO)
CB(28/04/2021)



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