IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2031 of 2006

Mahadevan .. Appellant/Claimant

Vs.

1.Mahaari Pa Begum

2.The Branch Manager,
United India Insurance Co. Ltd.,
52, General Muthia Street,
Chennai 79. .. Respondents/ Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 05.06.2001, made in M.C.O.P. No.19 of 2001, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Nagapattinam.

For Appellant : Mrs.S.T.P.Kuilmozhi

For Respondents : Mr.D.Baskaran (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of the compensation granted by the award dated 05.06.2001, made in M.C.O.P. No.19 of 2001, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Nagapattinam.

2.The appellant-claimant filed M.C.O.P. No.19 of 2001, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Nagapattinam, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 08.08.2000.

3.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 1st respondent and directed the 2nd respondent as insurer of the said vehicle to pay a sum of Rs.4,81,971/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 05.06.2001, made in M.C.O.P. No.19 of 2001, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended the Tribunal having fixed the disability suffered by the appellant as 60%, granted a meagre sum of Rs.3,60,000/- towards disability. The appellant is moving with the help of the metallic plates and he is unable to claim the staircase. The Tribunal ought to have considered the injuries sustained by the appellant and awarded more compensation towards disability. For the injuries suffered in the accident, the appellant has taken treatment as in-patient in Vinothagan Hospital, Thanjavore for a period of 46 days and underwent two surgeries. The Tribunal failed to award any amount towards attendant charges. At the time of accident, the appellant was working as an Advocate and was earning a sum of Rs.12,000/- per month. The Tribunal without taking into consideration the Income Tax Returns filed by the appellant which shows the annual income as Rs.1,07,360/-, fixed the annual income of the appellant as Rs.40,000/-, which is very meagre. The total compensation granted by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent contended that the appellant has not proved that he suffered functional disability and hence, he is not entitled to any amount towards loss of earning. The accident has occurred on 08.08.2000. The appellant has produced only the Income Tax Returns for the year 2000 - 2001 for the purpose of claiming more compensation. The appellant failed to produce Income Tax Returns for the subsequent and previous years. In the absence of said document, the Tribunal rightly fixed the annual income of the appellant as Rs.40,000/-. The Tribunal considering the injuries suffered by the appellant, awarded compensation under different heads, which are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

8.It is the contention of the appellant that at the time of accident, he was working as Advocate and was earning a sum of Rs.12,000/- per month. The appellant has marked the Income Tax

Returns for the year 2000-2001 as Ex.P7. The accident has occurred on 08.08.2000 and Ex.P7 was filed subsequent to accident. The Tribunal considering the fact that the appellant failed to mark the Income Tax Returns for the subsequent year and previous year, fixed the annual income of the appellant as Rs.40,000/-. The same is in order. In the accident, the appellant sustained grievous injuries and examined P.W.2 - Doctor who assessed and certified that the appellant suffered 71% disability. The Tribunal considering the nature of injuries and the disability certificate marked as Ex.P11, reduced the percentage of disability to 60%, which is not erroneous. The Tribunal considering the evidence on record, rightly fixed the age of the appellant as 38 years, but erroneously applied the multiplier '15' and awarded a sum of Rs.3,60,000/- as compensation towards disability. As per II Schedule, the correct multiplier applicable is '16'. Hence, the compensation granted by the Tribunal towards disability is modified to Rs.3,84,000/- [Rs.40,000/- x 16 x 60%].

9.From the materials on record, it is seen that for the injuries sustained in the accident, the appellant has taken treatment as in-patient in Vinodhagan Hospital, Thanjavore from 08.08.2000 to 22.09.2000, and has underwent two surgeries. To prove the same, the appellant has marked the medical bills as Exs.P4 & P5. The Tribunal has not awarded any amount towards attendant charges, loss of amenities and damages to clothes. Considering the nature of injuries, period of treatment and disability suffered, this Courts awards a sum of Rs.15,000/- towards attendant charges, Rs.20,000/- towards loss of amenities and Rs.1,000/- towards damages to clothes. The amount awarded by the Tribunal at Rs.20,000/- towards pain and suffering, Rs.4,650/- towards transportation and Rs.5,000/- towards extra nourishment are meagre and hence, the same are enhanced to Rs.30,000/-, Rs.5,000/- and Rs.20,000/- respectively. The amount awarded by the Tribunal towards medical expenses is just and reasonable and hence, the same is 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.	Medical expenses	92,321/-	92,321/-	Confirmed

2.	Transportation	4,650/-	5,000/-	Enhanced
3.	Pain and suffering	20,000/-	30,000/-	Enhanced
4.	Permanent disability	3,60,000/-	3,84,000/-	Enhanced
5.	Extra nourishment	5,000/-	20,000/-	Enhanced
6.	Attendant charges	-	15,000/-	Granted
7.	Loss of amenities	-	20,000/-	Granted
8.	Damages to clothes	-	1,000/-	Granted
	Total	4,81,971/-	5,67,321/-	Enhanced by Rs.85,350 /-

10.In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.4,81,971/- is enhanced to Rs.5,67,321/- along with interest and costs. The 2nd respondent is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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.19 of 2001. On such deposit, the appellant is permited to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.85,350/-. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge,
(Motor Accident Claims Tribunal),
Nagapattinam.

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

+1cc to Mrs.S.T.P.Kuilmozhi, Advocate SR.No. 33032

A.SK(05.01.2021)