

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2519 of 2007

N.Manikandan

.. Appellant/Claimant

Vs.

1.Naseema Sultana

2.United India Insurance Company Limited,
Branch Office, Sipcot Branch,
No.40, K.R.Road, Fort,
Bangalore - 560 002.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.02.2006 made in M.C.O.P.No.175 of 2002 on the file of the Motor Accident Claims Tribunal, Sub Court, Hosur.

For Appellant : Mr.S.Lakshnamanaswamy

For R2 : Mr.E.Rajadurai
for Mr.M.B.Gopalan

R1 : Set exparte before Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 24.02.2006 made in M.C.O.P.No.175 of 2002 on the file of the Motor Accident Claims Tribunal, Sub Court, Hosur.

2.The appellant is the claimant in M.C.O.P.No.175 of 2002 on the file of the Motor Accident Claims Tribunal, Sub Court, Hosur. He filed the above said claim petition, claiming a sum of Rs.16,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.09.2002.

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 lorry belonging to the first respondent and directed the respondents, being the

owner and insurer of the lorry to pay a sum of Rs.8,90,000/- 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 Tribunal erred in awarding only Rs.8,90,000/- with interest at the rate of 9% per annum without properly appreciating the age, monthly income, nature of injuries, disability, medical expenses and loss of earning power of the appellant. The Tribunal ought to have awarded a sum of Rs.16,00,000/- as claimed by the appellant together with interest at the rate of 15% per annum. The Tribunal failed to consider the evidence of Doctors P.W.2 to P.W.4 and Exs.A12 to A20, by which the appellant has proved the percentage of disability suffered by him. The learned counsel appearing for the appellant further contended that even after filing the appeal, the appellant was taking treatment and has taken various tests for further treatment and he underwent surgery in the abdomen in the year 2018 for the injuries sustained by him in the liver. The amounts awarded by the Tribunal under various heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the oral and documentary evidence let in by the appellant in proper perspective has awarded compensation under different heads. The compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

8. From the materials available on record, it is seen that the accident has occurred in the year 2002. The appellant has suffered grievous injuries in the accident and has taken treatment in Government Hospital, Hosur, St. John's Hospital, Bangalore and K.R.Hospital, Bangalore. A surgery was conducted and a part of the Liver was removed. From the materials produced by the appellant, it is seen that the appellant was originally admitted in Government Hospital, Hosur and thereafter shifted to K.R.Hospital, Bangalore in a critical condition and admitted in ICU as in-patient from 01.10.2002 to 26.10.2002. Due to the injuries and disability, he could not continue his work and he resigned his job. The appellant has examined three Doctors as P.W.2 to P.W.4 to prove the nature of injuries sustained by him.

P.W.3/Doctor issued disability certificate, wherein he has stated that appellant suffered 75% disability and appellant has marked the same as Ex.P24/disability certificate. P.W.3/Doctor has not assessed the disability for the whole body. Therefore, the disability suffered by the appellant for the whole body is fixed at 25% being $\frac{1}{3}^{\text{rd}}$ of 75%.

9.The appellant is well qualified and he was working as Assistant Manager - Purchase in M/s.Ashok Leyland, Perandapalli, Hosur and was earning a sum of Rs.38,000/- per month. The Tribunal considering Ex.P8/salary certificate, fixed monthly income of the appellant at Rs.14,800/- and awarded a lumpsum amount of Rs.1,50,000/- towards loss of earning power. Due to the injuries and disability, the appellant could not continue his work and by Ex.P21 he resigned his job and by Ex.P22, the same was accepted by his employer. The Tribunal without properly appreciating the evidence of Doctors, awarded meagre sum of Rs.1,50,000/- towards loss of earning power. The appellant has lost his job due to the injuries and he proved the same by examining Doctors and by filing documents. In view of the same, the appellant is entitled to compensation by adopting multiplier method. The appellant was aged 32 years at the time of accident and the multiplier applicable as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others vs. Delhi Transport Corporation & another] is '16'. The contention of the learned counsel appearing for the appellant is that if the appellant would have worked till the age of 58 years, he will get considerable enhancement in his salary. Considering the said contention and the age of the appellant, the appellant is entitled to 40% enhancement towards future prospects. The monthly income fixed by the Tribunal at Rs.14,800/- is proper. Thus, the compensation awarded by the Tribunal towards loss of earning power is enhanced to Rs.9,94,560/- {Rs.20,720/- [Rs.14,800/- + Rs.5,920/- (40% of Rs.14,800/-)] X 12 X 16 X 25/100}.

10.From the additional typed set of papers filed by the appellant, it is seen that the appellant was originally admitted in Government Hospital, Hosur and thereafter shifted to K.R.Hospital, Bangalore in a critical condition and admitted in ICU as in-patient from 01.10.2002 to 26.10.2002. Due to the injuries he would have spent amounts for attendant charges, extra nourishment and transportation. Therefore, a sum of Rs.30,000/- is awarded towards attendant charges. Rs.10,000/- awarded by the Tribunal towards transportation and extra nourishment is modified as the appellant is entitled to a sum of Rs.30,000/- each towards transportation and extra nourishment. In the additional typed set of papers filed by the appellant, it is seen that the appellant has taken continuous treatment even in the year 2018 and he underwent surgery in the abdomen for the damage of the liver. Considering the same, a sum of

Rs.1,00,000/- is awarded towards future medical expenses and this amount will carry interest only from the date of this judgment. The Tribunal has not awarded any amount towards damages to clothes. Therefore, a sum of Rs.1,000/- is awarded towards damages to clothes. The amounts awarded by the Tribunal towards pain and sufferings, medical expenses and disability are just and reasonable and hence, the same are confirmed.

11.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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.	Disability	1,30,000/-	1,30,000/-	Confirmed
2.	Pain and sufferings	1,00,000/-	1,00,000/-	Confirmed
3.	Loss of earning power	1,50,000/-	9,94,560/-	Enhanced
4.	Extra nourishment and transportation	10,000/-	30,000/-	Enhanced
		-	30,000/-	Enhanced
5.	Attendant charges	-	30,000/-	Granted
6.	Medical expenses	5,00,000/-	5,00,000/-	Confirmed
7.	Future medical expenses	-	1,00,000/-	Granted
8.	Damages to clothes	-	1,000/-	Granted
	Total	Rs.8,90,000/-	Rs.19,15,560/-	enhanced by Rs.10,25,560/-

12.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.8,90,000/- is hereby enhanced to Rs.19,15,560/- together with interest and costs. The appellant is entitled to interest at the rate of 9% per annum for the amount of Rs.18,15,560/- from the date of petition till the date of deposit. The appellant is entitled to interest at the rate of 9% per annum for Rs.1,00,000/- from the date of this judgment till the date of

deposit. The appellant is directed to pay the necessary Court fee on the enhanced amount of compensation now determined by this Court. The respondents 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.175 of 2002 on the file of the Motor Accident Claims Tribunal, Sub Court, Hosur. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, 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-IX)

//True copy//

Sub Assistant Registrar

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To

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

+1cc to Mr.M.B.Gopalan, Advocate SR.No.23780

+1cc to Mr.S.Lakshnamanaswamy, Advocate SR.No.23469

C.M.A.No.2519 of 2007

BS (CO)
GMY (06/11/2020)

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