

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1099 of 2013

P.Shankar

.. Appellant/ Petitioner

Vs.

1.M.Saravanan

2.The New India Assurance Company Limited,
Divisional Office, No.29, Ram Complex,
Paramathi Road,
Namakkal Town. ..Respondents/ Respondents
(The first respondent is set ex-parte
before the Tribunal, hence, notice
may be dispensed with in this appeal)

Prayer: This Civil Miscellaneous Appeal is filed under Section
173 of Motor Vehicles Act, 1988, against the judgment and decree
dated 22.11.2011 made in M.C.O.P.No.622 of 2010 on the file of
Motor Accident Claims Tribunal, Fast Track Court, Namakkal.

For Appellant : Mr.Ma.P.Thangavel

For R1 : Ex-parte

For R2 : Mr.R.Neethi Perumal

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant
seeking enhancement of compensation granted by the Tribunal in
the award dated 22.11.2011 made in M.C.O.P.No.622 of 2010 on the
file of Motor Accident Claims Tribunal, Fast Track Court,
Namakkal.

2.The appellant is the claimant in M.C.O.P.No.622 of 2010 on
the file of Motor Accident Claims Tribunal, Fast Track Court,
Namakkal. He filed the said claim petition claiming a sum of
Rs.10,00,000/- as compensation for the injuries sustained by him
in the accident that took place on 01.08.2009.

3.The case of the appellant is that on 01.08.2009, at about 03.00PM, near Railway Bridge at Maniyankallipatti Panchayat on Namakkal to Mohanur main road, while the appellant was travelling as a passenger in Palaniappa Mini bus bearing Regn. No.TN-28-K-8718, which is owned by the 1st respondent and insured with the 2nd respondent, towards south to north direction driven by its driver in a rash and negligent manner, dashed behind another Mini bus Sellammal bearing Regn. No.TN-37/4052. Due to the said accident, the appellant sustained grievous injuries and he was admitted in Malar Hospital, Mohanur for first aid and then, he was shifted to C.M.Hospital, Namakkal for further treatment, where he underwent surgery.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the Mini Bus and directed the 2nd respondent-insurance company to pay a sum of Rs.2,26,000/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.Heard Mr.Ma.P.Thangavel, learned counsel for the appellant and Mr.R.Neethi Perumal, learned counsel for the second respondent and perused the materials available on record.

6.A perusal of the records shows that the claimant has sustained fracture and injuries below his right shoulder and he was immediately admitted in Mohanur Malar hospital and then, he got shifted to Namakkal C.M.Hospital and he took treatment. In this aspect, the Orthopedic doctor of C.M.Hospital, Namakkal P.W.2/ Dr.Sivalingam deposed that he sustained fracture on the right humerus radius and ulna and surgical operations were done for the above said fracture separately with open reduction interlocking fixation in nature and has assessed the partial permanent disability as 48% and the Tribunal has reduced the same to 30%, at the rate of Rs.1,500/- per percentage and awarded a sum of Rs.45,000/-. Considering the nature of injuries, this Court is inclined to enhance the same, at the rate of Rs.3,000/- per percentage and awards a sum of Rs.90,000/- (Rs.3,000 X 30) towards "permanent disability". It is seen that the appellant was a Civil Engineer and his qualification is DCE as per Ex.P4 to P7 and, no document is filed to show that he was working as Site Engineer in Arun Constructions and earning a sum of Rs.15,000/- per month. Hence, the Tribunal has fixed a sum of Rs.5,000/- as income of the appellant. Considering the disability and period of treatment as inpatient and 3 fractures in the right hand, he could not resume his previous work for maximum period of one year and so, he is entitled for one year salary as loss of income and awarded a sum

of Rs.60,000/- towards the same. This Court feels that by taking into account the nature of injuries, the Tribunal ought to have awarded compensation only for a period of 6 months and has erred in fixing the non-working period as one year. Accordingly, this Court is inclined to reduce the same to Rs.30,000/- (5,000 X 6). The Tribunal has awarded a sum of Rs.35,000/- towards "Pain and Sufferings" and the same is hereby confirmed. The Tribunal has awarded a sum of Rs.3,000/- towards the "Transportation" which is increased to Rs.5,000/-. The Tribunal did not award any amount towards "attender charges". This Court is inclined to award a sum of Rs.5,000/- for the same. The amount awarded by the Tribunal under other heads are confirmed hereby. The award passed by this Court under various heads is extracted hereunder:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Disability	45,000/-	90,000/-	enhanced
2.	Pain and Sufferings	35,000/-	35,000/-	confirmed
3.	Loss of income	60,000/-	30,000/-	reduced
4.	Medical Expenses	72,905/-	72,905/-	confirmed
6.	Attender Charges	----	5,000/-	awarded
7.	Transportation	3,000/-	5,000/-	enhanced
7.	Extra Nourishment	10,000/-	10,000/-	confirmed
	Total	Rs.2,25,905/- rounded off to Rs.2,26,000/-	Rs.2,47,905/- rounded off to Rs.2,48,000/-	enhanced by Rs.22,000/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,26,000/- is hereby enhanced to Rs.2,48,000/- 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 the necessary Court fee, if any, on the enhanced compensation. The second respondent 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 already withdrawn, if any. No costs.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

sbn
To

1. The Judge,
Motor Accident Claims Tribunal
Fast Track Court,
Namakkal.

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

+1cc to Mr.Ma.P.Thangavel , Advocate SR.No. 4231
C.M.A.No.1099 of 2013
A.SK(10/11/2020)

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