

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.115 of 2011

Dr.S.Balan

.. Appellant/Petitioner

Vs.

1.N.Balasubramanian
(R1 set exparte lower court)

2.National Insurance Company Limited,
No.751, Anna Salai,
Chennai - 600 006. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.04.2010 made in M.C.O.P.No.2545 of 2006 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Ms.K.Vasanthamala
for Mr.UM.Ravichandran
For R2 : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 28.04.2010 made in M.C.O.P.No.2545 of 2006 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.2545 of 2006 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 28.06.2005.

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 van belonging to the 1st respondent and directed the 2nd respondent-Insurance

Company, being the insurer of the van to pay a sum of Rs.5,71,700/- 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 compound comminuted supracondylar fracture right femur with fracture tibial spine and multiple injuries all over his body. P.W.2/Doctor examined the appellant and certified that appellant suffered 60% disability and issued Ex.P25/disability certificate to that effect and the compensation awarded by the Tribunal towards disability is meagre. The appellant was aged 39 years and practicing as Doctor and was earning a sum of Rs.5,00,000/- per annum and the compensation awarded by the Tribunal towards loss of income is meagre. The Tribunal ought to have adopted multiplier method and awarded compensation for loss of earning capacity. The Tribunal has not awarded any amount for mental agony, loss of amenities and loss of expectation of life. The amounts awarded by the Tribunal under attendant charges, transportation, extra nourishment, loss of marital prospects and pain and sufferings 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 evidence of P.W.2/Doctor, has awarded a sum of Rs.72,000/- towards disability by fixing a sum of Rs.1,200/- per percentage of disability, which is not meagre. The Tribunal fixed a sum of Rs.15,000/- per month as notional income of the appellant and awarded compensation towards loss of income for five months, which is not meagre. The appellant has not suffered functional disability and hence, he is not entitled to compensation towards loss of earning capacity. The amounts awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of compensation 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 award passed by the Tribunal, it is seen that the appellant suffered compound comminuted supracondylar fracture right femur with fracture tibial spine and multiple injuries all over his body and to prove the same, the appellant

examined P.W.2/Doctor. P.W.2/Doctor examined the appellant and certified that appellant suffered 60% disability and issued Ex.P25/disability certificate to that effect. The Tribunal considering the evidence of P.W.2/Doctor and Ex.P25/disability certificate, awarded a sum of Rs.72,000/- towards disability by fixing a sum of Rs.1,200/- per percentage of disability. The accident occurred in the year 2005 and the appellant is entitled to a sum of Rs.2,000/- per percentage of disability. Thus, the amount awarded by the Tribunal towards disability is enhanced to Rs.1,20,000/- [Rs.2,000/- X 60% of disability]. The appellant has not proved that he suffered functional disability and lost his earning capacity. Therefore, he is not entitled to any amount towards loss of earning capacity by adopting multiplier method.

9.It is the contention of the appellant that at the time of accident he was aged 39 years and was practicing as Doctor and earning a sum of Rs.5,00,000/- per annum. The Tribunal considering the contention of the appellant and year of accident, fixed a sum of Rs.15,000/- per month as notional income of the appellant, which is proper. The Tribunal has awarded compensation towards loss of income only for five months, which is not correct. Due to the injuries and disability suffered by the appellant, he would not have attended his work atleast for a period of 12 months. Thus, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.1,80,000/- [Rs.15,000/- X 12 months]. From the award passed by the Tribunal, it is seen that the appellant has taken treatment in Sri Balaji Hospital as in-patient for 73 days from 29.06.2005 to 09.09.2005 and the amount awarded by the Tribunal towards attendant charges is meagre. Hence, the same is enhanced to Rs.21,900/- (Rs.300/- X 73 days) at the rate of Rs.300/- per day. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards pain and sufferings, extra nourishment and loss of marital prospects are meagre and the same are enhanced to Rs.50,000/-, Rs.25,000/- and Rs.1,00,000/- respectively. The amounts awarded by the Tribunal towards transportation and medical expenses are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Amount confirmed, enhanced or granted (Rs)
1.	Disability	72,000/-	1,20,000/-	Enhanced
2.	Pain and sufferings	40,000/-	50,000/-	Enhanced
3.	Loss of income	75,000/-	1,80,000/-	Enhanced
4.	Attendant charges	15,000/-	21,900/-	Enhanced
5.	Extra nourishment	10,000/-	25,000/-	Enhanced
6.	Transportation	7,000/-	7,000/-	Confirmed
7.	Loss of marital prospects	75,000/-	1,00,000/-	Enhanced
8.	Medical expenses	2,77,700/-	2,77,700/-	Confirmed
	Total	Rs.5,71,700/-	Rs.7,81,600/-	Enhanced by Rs.2,09,900/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,71,700/- is hereby enhanced to Rs.7,81,600/- together 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 judgment, to the credit of M.C.O.P.No.2545 of 2006 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. 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.

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-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The IV Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1 cc to Mr.UM.Ravichandran advocate sr23144
+1 cc to Mr.J.Chandran Advocate sr23470

C.M.A.No.115 of 2011

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