

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1220 of 2013

and

M.P.No.1 of 2015

A.Vijayaragahavan .. Appellant/Petitioner

Vs.

1.R.S.Mohammed Gouse

2.The New India Ass.Co.Ltd.,
No.8, Arcot Road, Porur,
Chennai-116.

.. Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.11.2012 made in M.C.O.P.No.498 of 2010 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge, Poonamallee.

For Appellant : Mr.J.Mahalingam
For R2 : Mr.K.Vinod for
Mr.E.Veeraravinddran
For R1 : Ex-Partee

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 26.11.2012 made in M.C.O.P.No.498 of 2010 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Judge, Poonamallee.

2.By consent of both parties, this Civil Miscellaneous Appeal is taken up for final disposal.

3.The appellant is the claimant in M.C.O.P.No.498 of 2010 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Judge, Poonamallee. He filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.03.2008.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent riding by the driver of the lorry belonging to the first respondent and directed the respondents to pay a sum of Rs.1,25,000/- as compensation to the appellant/claimant.

5.Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellant contended that at the time of accident the appellant is aged about 33 years and was working as a Quality Engineer and was earning a sum of Rs.18,000/- per month. The Tribunal erroneously fixed the monthly income of the appellant at Rs.4,500/-. The appellant suffered 40% permanent disability and grievous injuries. Due to the injuries and disability, the appellant could not able to do his work as he was doing earlier. The appellant was admitted at Government General Hospital for treatment. He sustained fracture right inferior pubic ramus, fracture left Zygoma, serious cut injury in urethra and other serious multiple injuries all over the body and he underwent inpatient treatment for 4 days from 10.03.2008 to 13.03.2008, he was conservatively treated. Thereafter due to some complications he was again admitted at Sri Ramachandra Hospital as a outpatient on 16.04.2008, wherein the petitioner sustained tight stricture noted involving the posterior urethra and free flow of contrast noted through anterior urethra and into the bladder. Again due to some complications he was admitted in Government General Hospital for treatment. He underwent inpatient treatment for 8 days from 21.04.2008 to 28.04.2008. He was surgically treated on 25.04.2008. The Tribunal has not granted any amount towards attendant charges and loss of amenities. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

7.Per contra, learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal accepting the evidence of P.W.2/Doctor and nature of injuries, accepted the disability certificate issued by P.W.2/Doctor and granted compensation at the rate of Rs.2,000/- per percentage and awarded amounts under different heads which are not meager and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the second respondent and perused the entire materials on record.

9. From the materials on record, it is seen that P.W.2/Doctor certified that the appellant suffered 40% disability. The Tribunal accepted the disability certificate issued by P.W.2/Doctor and granted a sum of Rs.9,000/- towards loss of income at the rate of Rs.4,500/- per month for two months. The accident occurred in the year 2008. The contention of the learned counsel for the appellant is that the appellant is working as a Quality Engineer and was earning a sum of Rs.18,000/- per month. In the absence of any material to prove the income of the appellant, the Tribunal has fixed a sum of Rs.4,500/- as monthly income of the appellant. The monthly income fixed by the Tribunal is meager and a sum of Rs.9,000/- is fixed by this Court as monthly income of the appellant. The Tribunal awarded a sum of Rs.2,000/- towards extra nourishment, which is not meager and the same is hereby confirmed. The Tribunal has not granted any amount towards attendant charges and loss of future amenities. Therefore, a sum of Rs.25,000/- is granted by this Court towards loss future amenities and a sum of Rs.5,000/- towards attenders charges. Considering the nature of injuries and disability suffered by the appellant, a sum of Rs.40,000/- has been enhanced towards permanent disability. The amount awarded by the Tribunal under other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	9,000/-	9,000/-	confirmed
2.	Transportation	2,000/-	5,000/-	enhanced
3.	Extra nourishment	2,000/-	5,000/-	enhanced
4.	Medical bills	1,500/-	1,500/-	confirmed
5.	Permanent disability	80,000/-	1,20,000/-	enhanced
6.	Pain and suffering	30,000/-	30,000/-	confirmed
7.	Attender charges	-	5,000/-	granted
8.	Future amenities	-	25,000/-	granted
9.	Loss of cloth	500/-	500/-	confirmed

	Total	Rs.1,25,000/-	Rs.2,01,000/-	enhanced by Rs.76,000/-
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10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,25,000/- is hereby enhanced to Rs.2,01,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd 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 if any, already withdrawn by making necessary applications before the Tribunal. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

sbn

To

1. The III Additional District and Sessions Judge,
Poonamallee.

Copy to

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

+1 CC to M/s. Elveera Ravindran, Advocate sr 404.

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C.M.A.No.1220 of 2013
and
M.P.No.1 of 2015

BS (CO)
SP (02/09/2020)