

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1706 of 2009

M. Udayakumar

... Appellant/Petitioner

Vs.

1.The Salem District Co-operative Milk Producer's
Union Ltd.,
by its Chariman, Salem District,
Salem 636 302.

2.P. Sampath

3.The United India Fire and General Insurance
Co Ltd., Salem. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.06.2006, made in M.C.O.P. No.8 of 1985, on the file of the I Additional District Judge, (Motor Accident Claims Tribunal) Salem.

For Appellant : Mr. P. Jagadeesan

For Respondents: Mr. V. Raghupathi (For R1)

Mrs. R. Sreevidhya (For R3)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of compensation granted by the award dated 23.06.2006, made in M.C.O.P. No.8 of 1985, on the file of the I Additional District Judge, (Motor Accident Claims Tribunal) Salem.

2.The appellant-claimant filed M.C.O.P. No.8 of 1985, on the file of the I Additional District Judge, (Motor Accident Claims Tribunal) Salem, claiming a sum of Rs.2,55,000/- as compensation for the injuries sustained by him in the accident that took place on 26.06.1984.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 2nd respondent, driver of the Jeep belonging to the 1st respondent and directed the respondents 1 and 3 who are the owner and insurer of the offending vehicle to jointly and severally pay a sum of Rs.35,500/- as compensation to the appellant and dismissed the claim petition as against the 2nd respondent.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 23.06.2006, made in M.C.O.P. No.8 of 1985, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that Tribunal failed to see that the injuries suffered by the appellant are grievous in nature. The Tribunal failed to consider the injuries in the forehead and back of the head. The appellant examined P.W.3 - Doctor and marked wound certificate as Ex.P3. P.W.3-Doctor certified that the appellant suffered 25% disability for the fracture in his left shoulder. The Tribunal erroneously reduced the percentage of disability to 10%. The appellant lost teeth and due to the same, his face disfigured. To prove the injuries and disability, he has examined P.W.2 - Doctor who examined the appellant and assessed that the appellant suffered 30% disability. The Tribunal reduced the percentage of disability to 15%. The Tribunal ought to have granted compensation for 55% disability as assessed by P.W.2 and P.W.3 Doctors. The appellant was working as a Contractor and was earning a sum of Rs.3,500/- per month. The sum of Rs.1,200/- per month fixed by the Tribunal as notional income of the appellant is meagre. The amounts awarded by the Tribunal towards disability, pain and suffering, loss of earning power and transportation are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 1st respondent submitted that the vehicle was insured with the 3rd respondent-Insurance Company and Insurance Policy was in force at the time of accident. Hence, the Insurance Company is liable to indemnify the owner of the vehicle. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal as against the respondents.

7.The learned counsel appearing for the 3rd respondent-Insurance Company contended that accident is of the year 1984. The appellant was examined by P.W.2 and P.W.3 - Doctors only in the year 2006. P.W.3 assessed disability for left shoulder and P.W.2 Doctor assessed for loss of teeth. The percentage of disability assessed by P.W.2 and P.W.3 - Doctors are excessive.

The Tribunal reduced the same by giving valid reason and awarded compensation which are not meagre and prayed for dismissal of the appeal.

8. Heard learned counsel appearing for the appellant, 1st respondent as well as the 3rd respondent-Insurance Company and perused the materials available on record.

9. From the materials on record, it is seen that the appellant has suffered injuries on left shoulder, forehead, back head and face. He also lost 4 teeth in front. The appellant has examined P.W.3- Doctor who assessed Ortho disability suffered by the appellant and certified that the appellant suffered disability of 25% for left shoulder. The Tribunal considering the assessment by P.W.3-Doctor is only for a particular part of the body, converted the same to whole body as 10% and applied multiplier method, fixing monthly income at Rs.1,200/-. The appellant has not substantiated his claim that he was earning a sum of Rs.3,500/- per month at the time of accident. In the absence of any material evidence, the Tribunal has fixed the notional income of the appellant at Rs.1,200/-. The accident is of the year 1984. The notional income fixed by the Tribunal is meagre. A sum of Rs.1,500/- per month is fixed as notional income of the appellant. The compensation awarded by the Tribunal for loss of earning power and Ortho disability is modified to Rs.28,800/- [Rs.1,500/- x 16 x 12 x 10%].

10. As far as loss of teeth and disfigurement of the face is concerned, P.W.2- Doctor assessed the disability at 35%. The Tribunal reduced the same to 15%, but has not granted any compensation. The appellant is entitled to compensation for 35% disability as assessed by P.W.2 Doctor. The accident is of the year 1984. The appellant is entitled to compensation of Rs.35,000/- for 35% disability for loss of teeth and disfigurement. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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.	Loss of earning power	23,040/-	28,800/-	Enhanced
2.	Permanent disability	10,000/-	10,000/-	Confirmed

3.	Pain and suffering	2,000/-	2,000/-	Confirmed
4.	Transportation	500/-	500/-	Confirmed
5.	Disability for loss of teeth and disfigurement	-	35,000/-	Granted
	Total	35,540/- rounded off to 35,500/-	76,300/-	Enhanced by Rs.40,800/-

11. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.35,500/- is enhanced to Rs.76,300/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 and 3 are jointly and severally 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.8 of 1985. On such deposit, the appellant is permitted 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.40,800/-. The appeal is dismissed as against the 2nd respondent. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

gsa

To

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

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

+1cc to Mr.V.Raghupathi, Advocate, S.R.No. 36125

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 36521

C.M.A.No.1706 of 2009

VBA (CO)

GN (08/06/2021)