

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1978 of 2010

K.Kamalnath Reddy

.. Appellant/Petitioner

Vs.

1.Sri.D.Nageswara Rao,
The Manager,
Messers.Truckers India,
D.No.B-6, Industrial Estate, Renigunta Road,
Tirupathi, Chittoor District.

2.The National Insurance Company Limited,
Branch Office, P.K.Layout,
Tirupathi,
Chittoor District - 507 501. .. Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.07.2008 made in M.C.O.P.No.1277 of 2006 on the file of the Motor Accident Claims Tribunal, Additional District Court, Krishnagiri.

For Appellant : Mr.K.Prasanna
for Mr.M.Sriram

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 04.07.2008 made in M.C.O.P.No.1277 of 2006 on the file of the Motor Accident Claims Tribunal, Additional District Court, Krishnagiri.

2.The appellant is the claimant in M.C.O.P.No.1277 of 2006 on the file of the Motor Accident Claims Tribunal, Additional District Court, Krishnagiri. He filed the above said claim

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petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.12.2005.

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 tempo belonging to the 1st respondent and directed the respondents 1 and 2, being the owner and insurer of the tempo respectively to pay jointly and severally a sum of Rs.87,327/- 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 due to the injuries sustained by the appellant in the accident, his ankle portion bone was fractured. P.W.2/Doctor examined the appellant and certified that appellant suffered 50% disability and issued Ex.P12/disability certificate to that effect. The Tribunal without giving any valid reason, reduced the percentage of disability to 20% and awarded compensation. The Tribunal ought to have awarded compensation for 50% disability. Due to the injuries sustained by the appellant in the accident, he lost his earning capacity and the Tribunal ought to have awarded compensation towards loss of earning capacity by adopting multiplier method. The appellant was aged 26 years and was doing Milk Business and was earning a sum of Rs.7,000/- per month. The Tribunal has not awarded any amount towards loss of income. The appellant has taken treatment in the hospital as in-patient for 24 days from 06.12.2005 to 23.12.2005 and from 25.07.2007 to 30.07.2007 and the Tribunal has not awarded any amount towards attendant charges and future medical expenses. The amounts awarded by the Tribunal towards transportation, extra nourishment 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 reduced the percentage of disability from 50% to 20% on the ground that P.W.2/Doctor has examined the appellant after three years from the date of accident. Therefore, the appellant is not entitled to compensation for 50% disability. The appellant has not proved that he suffered functional disability and hence, he is not entitled to compensation towards loss of earning capacity by adopting multiplier method. The appellant has not proved that

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due to the injuries sustained by him in the accident, he lost his income. Therefore, he is not entitled to any amount towards loss of income. 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 due to the injuries sustained by the appellant in the accident his ankle portion bone was fractured and to prove the same, the appellant examined P.W.2/Doctor. P.W.2/Doctor examined the appellant and certified that appellant suffered 50% disability and issued Ex.P12/disability certificate to that effect. The 2nd respondent-Insurance Company did not let in any contra evidence to disprove the contention of P.W.2/Doctor and Ex.P12/disability certificate. The Tribunal reduced the percentage of disability to 20% on the ground that P.W.2/Doctor has examined the appellant after three years from the date of accident and also the date of discharge was not mentioned in the discharge summary. The reason given by the Tribunal for reducing the percentage of disability is not correct. Considering the nature of injuries and evidence of P.W.2/Doctor, the disability suffered by the appellant is fixed at 40%. The accident occurred in the year 2005 and the Tribunal has awarded a sum of Rs.2,000/- per percentage of disability, which is proper. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.80,000/- [Rs.2,000/- X 40% 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 for 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 26 years and was doing Milk Business and was earning a sum of Rs.7,000/- per month. The appellant failed to prove the said contention. Hence, the Tribunal has not awarded any amount towards loss of income. Considering the age, nature of work done by the appellant and year of accident, a sum of Rs.4,000/- per month is fixed as notional income of the appellant. Due to the injuries and disability sustained by him, he would not have attended his work at least for a period of three months. Thus, the appellant is entitled to a sum of Rs.12,000/- [Rs.4,000/- X 3 months] towards loss of income. From

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the materials on record, it is seen that the appellant has taken treatment in the P.E.S.Medical College Hospital as in-patient for 5 days from 06.12.2005 to 10.12.2005 and at St.Johns Medical College Hospital, Bangalore from 10.12.2005 to 23.12.2005 and further he has taken treatment as in-patient from 25.07.2007 to 30.07.2007, totally 24 days but the Tribunal has not awarded any amount towards attendant charges and loss of amenities. Therefore, the appellant is entitled to a sum of Rs.4,800/- (24 days X Rs.200/- per day) and Rs.10,000/- towards attendant charges and loss of amenities respectively. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards transportation, pain and sufferings and extra nourishment are meagre and the same are hereby enhanced to Rs.5,000/-, Rs.10,000/- and Rs.5,000/- respectively. The appellant has not proved that he requires further treatment and hence, he is not entitled to any amount towards future medical expenses. The amount awarded by the Tribunal towards medical expenses is just and reasonable and hence, the same is 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.	Disability	40,000/-	80,000/-	Enhanced
2.	Pain and sufferings	5,000/-	10,000/-	Enhanced
3.	Extra nourishment	2,000/-	5,000/-	Enhanced
4.	Transportation	4,000/-	5,000/-	Enhanced
5.	Medical expenses	36,327/-	36,327/-	Confirmed
6.	Loss of income	-	12,000/-	Granted
7.	Loss of amenities	-	10,000/-	Granted
8.	Attendant charges	-	4,800/-	Granted
	Total	Rs.87,327/-	Rs.1,63,127/-	enhanced by Rs.75,800/-

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.87,327/- is hereby enhanced to Rs.1,63,127/- together with

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interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 and 2 are jointly and severally 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.1277 of 2006 on the file of the Motor Accident Claims Tribunal, Additional District Court, Krishnagiri. 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. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge,
Motor Accident Claims Tribunal,
Krishnagiri.

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

+1cc to M/s.V.Chandran, Advocate SR.20722

+1cc to M/s.Mukund R.Pandiyan, Advocate SR.21404

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