

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.205 of 2020

Arulraj

... Appellant/Petitioner

Vs.

1. Shanmugam
2. Manikandan

3. The National Insurance Co., Ltd.,
185/1, Mayyanoor Road, Opp: ARRS Multiplex Theatre,
Salem-636 004.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.07.2019 made in M.C.O.P.No.1171 of 2018 on the file of Motor Accident Claims Tribunal/Special Sub Court, No.II, Salem.

For Appellant : Mr.T.S.Arthanareeswaran

For R3 : Mr.J.Chandran

J U D G M E N T

सत्यमेव जयते

The Civil Miscellaneous Appeal is filed for enhancement of the compensation granted by the Tribunal in the award dated 09.07.2019 made in M.C.O.P.No.1171 of 2018 on the file of Motor Accident Claims Tribunal/Special Sub Court, No.II, Salem.

2. The appellant is the claimant in M.C.O.P.No.1171 of 2018 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, No.II, Salem. He filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 04.04.2018.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 2nd respondent, driver of the TATA ACE belonging to the 1st respondent and directed the 3rd respondent/Insurance Company being insurer of the said TATA ACE to pay a sum of Rs.2,80,097/- 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 the appellant was aged 42 years at the time of accident and was earning a sum of Rs.10,000/- per month from his own business (Metal Door worker). In accident, the appellant sustained grievous injuries and fractures (Left Knee Condyle Tibial Fracture) and has taken treatment as in-patient in Pranav Hospital, Salem from 04.04.2018 to 09.04.2018, for 6 days. Due to the injuries sustained in the accident, he could not continue his work as he was doing earlier. The Medical Board has assessed that the appellant suffered 20% permanent disability and issued disability certificate, marked as Ex.C1. Due to the disability sustained in the accident, the appellant has difficulties in squatting, sitting cross legged and pain at knee limp while walking. The Tribunal without considering the disability has awarded meagre amount as compensation. The amounts awarded by the Tribunal towards loss of income, extra nourishment, attendant charges and transportation charges are meagre and prayed for enhancement of compensation.

6.The learned counsel appearing for the 3rd respondent/Insurance Company contended that the Tribunal after considering the materials available on record, has awarded just compensation. 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 3rd respondent/Insurance Company and perused all the materials available on record.

8.It is the contention of the appellant that in the accident, he has sustained grievous injuries and fractures (Let Knee Condyle Tibial Fracture) and has taken treatment as in-patient in Pranav Hospital, Salem from 04.04.2018 to 09.04.2018.

Due to the injuries sustained in the accident, he could not continue his work as he was doing earlier. The Medical Board assessed the disability suffered by the appellant as 20% and issued disability certificate which was marked as Ex.C1. The Tribunal has granted compensation towards disability at the rate of Rs.3000/- per percentage of 20% disability. The accident occurred in the year 2018. This Court by judgment dated 09.01.2020 made in C.M.A.No.4870 of 2019 in the case of M/s.IFFCO TOKIO General Insurance Company Limited Vs. Venkatesh and another, fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to rise in cost of living. In the present case, the accident is of the year 2018. Hence, a sum of Rs.1,00,000/- (Rs.5,000/- x 20%) is awarded towards disability by fixing Rs.5,000/- per percentage of disability.

9. According to the appellant, at the time of accident, he was aged 42 years, doing own business and was earning a sum of Rs.10,000/- per month. The appellant has not produced any document to substantiate the said contention. In the absence of any material evidence to prove the avocation and income of the appellant. The Tribunal fixed a sum of Rs.7,000/- as monthly income of the appellant and awarded a sum of Rs.42,000/- towards loss of income for a period of six months, which is meagre. The accident is of the year 2018 and the monthly income fixed by the Tribunal is meagre. Considering the date of accident, a sum of Rs.12,000/- is fixed as monthly income of the appellant. Hence, the amount granted by the Tribunal towards loss of income is enhanced to Rs.72,000/- (Rs.12,000/- x 6). In the accident the appellant sustained grievous injuries and fractures (Left Knee Condyle Tibial Fracture) and has taken treatment as in-patient in Pranav Hospital, Salem from 04.04.2018 to 09.04.2018. Considering the period of treatment and nature of injuries sustained by the appellant, the amounts awarded by the Tribunal towards transport to hospital, extra nourishment, damage to clothes and attendant charges are meagre and hence, the same are enhanced to Rs.10,000/-, Rs.20,000/-, Rs.3,000/- and Rs.15,000/- respectively. 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.	Disability	60,000/-	1,00,000/-	Enhanced
2.	Pain and sufferings	25,000/-	25,000/-	confirmed
3.	Loss of amenities	25,000/-	25,000/-	Confirmed
4.	Medical Expenses	1,12,097/-	1,12,097/-	Confirmed
5.	Loss of Income	42,000/-	72,000/-	Enhanced
6.	Transport charges	5,000/-	10,000/-	Enhanced
7.	Extra Nourishment	5,000/-	20,000/-	Enhanced
8.	Attendant charges	5,000/-	15,000/-	Enhanced
9.	Damage to Clothes	1000	3,000	Enhanced
	Total	Rs.2,80,097/-	Rs.3,82,097/-	Enhanced by Rs.1,02,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,80,097/- is hereby enhanced to Rs.3,82,097/- 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 necessary Court fee, if any, on the enhanced compensation. The 3rd 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.No1171 of 2018. 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 filing necessary petitions before the Tribunal. No costs.

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Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vsn
To

The Special Subordinate Judge-II,
The Motor Accident Claims Tribunal,
Salem.

Copy to

The Section Officer
V.R.Section
High Court, Chennai.

+2cc to M/s.C.Paraneedharan, Advocte Sr.13722
+1cc to M/s.J.Chandran, Advocate Sr.13840

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