

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3332 of 2009

M.Murali

.. Appellant/Claimant

Vs.

1.V.M.Govindammal

2.National Insurance Company Ltd.

Branch office

Athur Taluk

Salem District.

... Respondents/Respondents

(R1 exparte in Lower Court)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.09.2007 made in M.C.O.P.No.134 of 2005 on the file of Motor Accident Claims Tribunal, Additional District Court, Dharmapuri.

For Appellant : Mr.M.Selvam

For R2 : Mr.J.Chandran

J U D G M E N T

The matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 19.09.2007 made in M.C.O.P.No.134 of 2005 on the file of Motor Accident Claims Tribunal, Additional District Court, Dharmapuri.

2.The appellant is claimant in M.C.O.P.No.134 of 2005 on the file of Motor Accident Claims Tribunal, Additional District Court, Dharmapuri. He filed the said claim petition claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.07.2004.

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 lorry belonging to the 1st respondent and directed both the 1st respondent as well as the 2nd respondent/Insurance Company being insurer of the said lorry to jointly and severally pay a sum of Rs.2,46,289/- 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 doing silk twisting business and was earning a sum of Rs.10,000/- per month. The appellant produced Exs.P21/Identity card, Exs.P22 and P23/Income Tax returns to prove the same. The Tribunal without considering the same, fixed a meagre sum of Rs.3,000/- as monthly income of the appellant. The amounts awarded by the Tribunal towards pain and suffering, extra nourishment and transportation are meagre. The Tribunal has not awarded any amount towards loss of amenities, future medical expenses and loss of happiness and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not proved that he lost his income due to the injuries. In the cross-examination, he himself has admitted that he is continuing the same business and getting income. Hence, the appellant is not entitled to get any 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 and perused the entire materials on record.

8.From the materials available on records, it is seen that it is the contention of the appellant that he was doing silk twisting business and was earning a sum of Rs.10,000/- per month. The Tribunal without properly considering Exs.P7 to P25 awarded a meagre amount by fixing a sum of Rs.3,000/- per month as notional income of the appellant. From the award of the Tribunal, it is seen that the appellant has filed Exs.P22 and 23/Income Tax returns for the year 2004-2005 and 2005-2006 respectively. The appellant has not filed any Income Tax returns for the previous year. Only by considering Income Tax returns filed prior to the accident and for the year subsequent to the accident, it can be seen whether the appellant has lost income due to the injuries sustained by him in the accident. The appellant in the cross-examination has admitted that he is continuing the same business. In view of the same, the notional

income fixed by the Tribunal is not meagre. Further, the appellant has admitted that he is doing the business even after the accident. In view of the fact that the appellant has failed to prove that he suffered loss of earning capacity and lost his income subsequent to the accident, the Tribunal erred in adopting multiplier method to award compensation. The appellant has taken treatment in St.Johns Medical College Hospital, Bangalore, as in-patient for 8 days from 06.07.2004 to 13.07.2004 and again from 02.09.2004 to 04.09.2004 for 3 days. The appellant has produced Exs.P5 and P6/Discharge summaries to prove the same. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the nature of injuries, disability and period of treatment taken by the appellant, a sum of Rs.10,000/- each is awarded towards loss of amenities and attendant charges. The amounts awarded by the Tribunal towards extra nourishment and transportation are meagre and hence, the same are hereby enhanced to Rs.7,000/- each. The appellant has not produced any document to prove that he is continuing treatment and therefore, he is not entitled to any compensation towards future medical expenses. The amounts awarded by the Tribunal under all 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 or reduced
1.	Disability	1,83,600	1,83,600	Confirmed
2.	Transportation	2,000	7,000	Enhanced
3.	Extra nourishment	1,000	7,000	Enhanced
4.	Pain and suffering	10,000	10,000	Confirmed
5.	Medical expenses	49,689	49,689	Confirmed
6.	Attendant charges	-	10,000	Granted
7.	Loss of amenities	-	10,000	Granted
	Total	2,46,289	2,77,289	Enhanced by Rs.31,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at

Rs.2,46,289/- is hereby enhanced to Rs.2,77,289/- 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 respondents 1 & 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. 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. No costs.

Sd/-

Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

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To

1.The Additional District Judge
Motor Accident Claims Tribunal
Dharmapuri.

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

+1cc to Mr.M.Selvam, Advocate SR.No.33658

+1cc to Mr.J.Chandran, Advocate SR.No.33658

C.M.A.No.3332 of 2009

LN (CO)
GMY (11/05/2021)

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