

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 248 of 2020

C. Raja

.. Appellant

Vs.

1.C. Madhava Naidu

2.The Oriental Insurance Co. Ltd.,
rep. by its Divisional Manager,
Having office at Jambu Bala Complex, Arcot Road,
Vellore Town. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 29.07.2019, made in M.C.O.P. No. 139 of 2017, on the file of the I Additional District and Sessions Judge (Motor Accident Claims Tribunal), Vellore.

For Appellant : Mr. R. Nalliyappan
For Respondents : Mr. J. Chandran (for R2)

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 29.07.2019, made in M.C.O.P. No. 139 of 2017, on the file of the I Additional District Court, (Motor Accident Claims Tribunal), Vellore.

2.By consent of both the parties, the appeal is taken up for final disposal at the admission itself.

3.The appellant-claimant filed M.C.O.P. No. 139 of 2017, on the file of the I Additional District Court, (Motor Accident Claims Tribunal), Vellore, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 18.04.2011.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the Motorcycle belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.1,21,030/- as compensation to the appellant.

5.Not being satisfied with the amounts awarded by the Tribunal in the award dated 29.07.2019, made in M.C.O.P. No. 139 of 2017, the appellant has come out with the present appeal.

6.Learned counsel appearing for the appellant contended that at the time of accident, he was working as a Construction Coolie and was earning a sum of Rs.20,000/- per month. Due to the accident, the appellant sustained bone fracture in the left humerus and took treatment as in-patient in Sri Sai Sudha Hospital, Tirupathi, from 26.04.2011 to 07.05.2011 and produced Ex.P9 - Discharge Summary to prove the same. The Tribunal ought to have considered the assessment of the Medical Board and granted more compensation towards disability. The Tribunal ought to have adopted multiplier method in awarding compensation towards disability. The Tribunal has not awarded any amount towards loss of amenities and future medical expenses. The amounts awarded by the Tribunal towards loss of income, pain and suffering, extra nourishment, attendant charges and transportation are meagre and prayed for enhancement of the compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that in the absence of any evidence by the appellant to prove that he suffered functional disability, the Tribunal rightly considering the nature of injuries and disability assessed by the Medical Board, awarded a sum of Rs.60,000/- towards disability, which is not meagre. The Tribunal has granted compensation under different heads, which are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

9.It is the contention of the appellant that due to the accident, the appellant suffered Grade II Compound Supracondylar Fracture left humerus and took treatment as in-patient in Sri Sai Sudha Hospital, Tirupathi, from 26.04.2011 to 07.05.2011. The Medical Board has assessed the percentage of disability sustained by the appellant as 20%. The Tribunal considering the

disability assessed by the Medical Board, awarded a sum of Rs.60,000/- towards 20% disability, by awarding Rs.3,000/- per percentage and the same is proper. The Tribunal has awarded a meagre sum towards extra nourishment, attendant charges, damages to clothes and pain and suffering. Considering the nature of injuries and the period of treatment, the amounts awarded by the Tribunal towards extra nourishment, pain and suffering, attendant charges and damages to clothes are enhanced to Rs.15,000/-, Rs.20,000/- Rs.15,000/- and Rs.2,000/- respectively. The Tribunal has not awarded any amount towards loss of amenities. The appellant is entitled to a sum of Rs.20,000/- towards loss of amenities.

9(a) According to the appellant, at the time of accident, he was doing Construction Coolie work and was earning a sum of Rs.20,000/- per month. He has not substantiated the same. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal has fixed a meagre sum of Rs.6,000/- per month as notional income of the appellant. The accident is of the year 2011. Hence, a sum of Rs.8,000/- per month is fixed as the notional income of the appellant. Due to the accident, the appellant would not have worked at least for a period of six months. Hence, the amounts awarded by the Tribunal towards loss of income is modified to Rs.48,000/- (Rs.8,000/- x 6 months). The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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/-	60,000/-	Confirmed
2.	Pain and suffering	10,000/-	20,000/-	Enhanced
3.	Extra nourishment	3,000/-	15,000/-	Enhanced
4.	Attendant charges	2,000/-	15,000/-	Enhanced
5.	Transport to Hospital	20,000/-	20,000/-	confirmed
6.	Damages to clothes	1.1,000/-	2,000/-	Enhanced
7.	Loss of amenities	-	20,000/-	granted

8.	Medical expenses	7,030/-	7,030/-	confirmed
9.	Loss of income	18,000/-	48,000/-	enhanced
	Total	1,21,030/-	2,07,030/-	Enhanced by Rs.86,000/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,21,030/- is enhanced to Rs.2,07,030/- along with interest and costs. The 2nd respondent Insurance Company is 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. 139 of 2017. 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.86,000/-. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

gsa

To

1. The I Additional District and Sessions Judge,
(Motor Accident Claims Tribunal),
Vellore.

Copy to

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

+1 Cc to Mr. Chandran, Advocate sr 9136

+1 CC to Mr. Nalliyappan, Advocate sr 7998.

C.M.A. No. 248 of 2020

MG(CO)

SP(14/08/2020)