

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1683 of 2013

Rajagopal

.. Appellant/Petitioner

Vs.

1.Kumar

2.The Divisional Manager,
New India Assurance Co.Ltd,
No.42, Big Street,
Thiruvannamalai.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.07.2011 made in M.C.O.P.No.78 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruvannamalai.

For Appellant : Mr.F.Terry Chellaraja

For R2 : Mr.J.Michael Visuvasam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 28.07.2011 made in M.C.O.P.No.78 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruvannamalai.

2.The appellant is the claimant in M.C.O.P.No.78 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruvannamalai. He filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 19.12.2008.

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3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Mahindra Champion Pickup Van, belonging to the 1st respondent and directed both the 1st respondent-owner of the vehicle as well as the 2nd respondent-Insurance Company, to jointly or severally pay a sum of Rs.1,20,000/- 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 in the accident, the appellant suffered fracture of left distal humerus, multiple compound fracture of both fore arm, left wrist, degloving injury at left wrist, skin grafting and external fixation in left wrist and fore arm was done. P.W.3/Doctor examined the appellant and certified that appellant suffered 50% disability. The Tribunal reduced the same to 35% without giving any valid reason. The Tribunal ought to have awarded compensation for 50% disability by adopting multiplier method. The appellant was an agriculturist and was earning a sum of Rs.5,000/- per month. But, the Tribunal has awarded a meagre amount of Rs.15,000/- towards loss of income. Initially, the appellant was admitted in Government Hospital, Villupuram for first-aid and then he has taken treatment as in-patient at the Koti Orthopaedic and Trauma Care Speciality Hospital, Villupuram, for 78 days from 20.12.2008 to 08.03.2009. Subsequently, the appellant has taken treatment at Sanjay Gandhi Institute, Karnataka, as in-patient for 26 days from 03.08.2009 to 28.08.2009 and underwent two major operations on 26.12.2008 and 10.02.2009. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, Mr.J.Michael Visuvasam, learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal considering the evidence of P.W.2/Doctor in his cross examination reduced the percentage of disability from 50% to 35%. Hence, the appellant is not entitled to compensation for 50% disability. The appellant has not proved that due to injuries, he is totally immobilized and unable to do any work. The appellant failed to prove that he suffered functional disability and hence, he is not entitled to any compensation towards disability by adopting multiplier method. The percentage method adopted by the Tribunal for awarding compensation towards disability is proper. The appellant has not made out any case

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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 second respondent and perused the materials available on record.

8. From the materials on record, it is the contention of the appellant that in the accident, he suffered multiple fractures all over the body and has taken treatment under different spells. Skin grafting and external fixation in the left wrist and fore arm was done. To prove the nature of injuries and disability, the appellant examined P.W.3/Doctor, who has certified that appellant suffered 50% disability and issued Ex.P13/disability certificate to that effect. The 2nd respondent-Insurance Company has not adduced any contra evidence to disprove the evidence of P.W.3/Doctor and Ex.P13/disability certificate. The Tribunal reduced the percentage of disability to 35% holding that P.W.3/Doctor examined the appellant only after 1 ½ years from the date of accident. The reason given by the Tribunal for reducing the percentage of disability to 35% is not correct. The appellant is entitled to compensation for 50% disability. The accident occurred in the year 2008 and the amount awarded by the Tribunal per percentage of disability is meagre. Considering the year of accident, the appellant is entitled to compensation at the rate of Rs.2,000/- per percentage of disability. Thus, the amount awarded by the Tribunal towards permanent disability is enhanced to Rs.1,00,000/- (Rs.2,000/- X 50% of disability). The appellant has not proved that he suffered functional disability and hence, he is not entitled to compensation towards disability by adopting multiplier method.

9. It is the contention of the appellant that he was aged 60 years at the time of accident and was earning a sum of Rs.5,000/- per month by doing agricultural work. But he failed to prove the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal has awarded a sum of Rs.15,000/- towards loss of income during treatment period, which is proper. According to the appellant, he was admitted in Government Hospital, Villupuram for first-aid and he has taken treatment as in-patient at Koti Orthopaedic and Trauma Care Speciality Hospital, Villupuram, for 79 days from 20.12.2008 to 08.03.2009 and also at Sanjay Gandhi Institute, Karnataka, as in-patient for 26 days from 03.08.2009 to 28.08.2009. Further, the appellant underwent two major operations on 26.12.2008 and 10.02.2009. The Tribunal has not awarded any amounts towards attendant charges and loss of

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amenities. Considering the nature of injuries and period of treatment taken by the appellant, he is entitled to a sum of Rs.52,500/- (Rs.500/- X 105 days) towards attendant charges at the rate of Rs.500/- per day and a sum of Rs.20,000/- towards loss of amenities. The Tribunal has awarded a lumpsum amount of Rs.50,000/- towards extra nourishment, medical expenses & future medical expenses and transportation, which is not correct and the same is set aside. The appellant is entitled to compensation separately under these heads. Therefore, the sum of Rs.35,000/-, Rs.20,000/- and Rs.10,000/- are awarded towards extra nourishment, medical expenses & future medical expenses and transportation respectively. The Tribunal has awarded a meagre sum of Rs.20,000/- towards pain and suffering and the same is enhanced to Rs.30,000/-. The amounts awarded by the Tribunal towards loss of income is just and reasonable and hence the same is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Extra nourishment, medical expenses & future medical expenses and transportation	50,000/-	-	Set aside
2.	Extra nourishment	-	35,000/-	Granted
3.	Medical expenses & future medical expenses	-	20,000/-	Granted
4.	Transportation	-	10,000/-	Granted
5.	Disability	35,000/-	1,00,000/-	Enhanced
6.	Pain & suffering	20,000/-	30,000/-	Enhanced
7.	Loss of income	15,000/-	15,000/-	Confirmed
8.	Attendant charges	-	52,500/-	Granted
9.	Loss of amenities	-	20,000/-	Granted
	Total	Rs.1,20,000/-	Rs.2,82,500/-	enhanced by Rs.1,62,500/-

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

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Rs.1,20,000/- is hereby enhanced to Rs.2,82,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Both the first respondent as well as the second respondent/Insurance Company are directed to jointly or severally deposit the enhanced award amount now determined by this Court, together 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.78 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruvanamalai. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, 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(CS-VIII)

//True Copy//

Sub Assistant Registrar

gbi

To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Tiruvanamalai.

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

+1cc to Mrs.M.Malar, Advocate SR.22273
+1cc to Mr.J.Michael Visuvasam, Advocate SR.22240

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