

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1774 of 2013

Elumalai

.. Appellant/Claimant

Vs.

1.Sister S.Gorodeda

2.The United India Insurance Co.Ltd.,
No.95, Big Street,
Tiruvannamalai.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.06.2010 made in M.C.O.P.No.360 of 2004 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Thiruvannamalai.

For Appellant : Ms.A.Subadra
for Ms.M.Malar
For R2 : Ms.R.Vijaya Kamala

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 29.06.2010 made in M.C.O.P.No.360 of 2004 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Thiruvannamalai.

2.The appellant is claimant in M.C.O.P.No.360 of 2004 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Thiruvannamalai. 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 07.01.2004.

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 Auto belonging to the 1st respondent and directed the 2nd respondent/Insurance Company, being insurer of the Auto to pay a sum of Rs.2,35,000/- as compensation to the appellant and dismissed the claim petition as against the 1st respondent.

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 sustained fracture of left shaft femur and now it is mal-united. The appellant underwent surgeries and screws and nails were implanted and proved the same by examining P.W.2/Doctor. P.W.2/Doctor assessed the disability of the appellant at 40%, but the Tribunal reduced the same to 20% and awarded a meagre sum of Rs.20,000/- towards disability. The appellant was working as a Teacher in Government Middle School, Perumanam Village and Post, Thiruvannamalai District, and was earning a sum of Rs.10,000/- per month. The appellant has taken treatment in the hospital as inpatient for 21 days and a surgery was also conducted and the Tribunal has awarded a meagre sum of Rs.15,000/- towards loss of income. The Tribunal has not awarded any amount towards attendant charges, medical expenses, future medical expenses, loss of amenities and mental agony separately. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, Ms.R.Vijaya Kamala, learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal reduced the percentage of disability from 40% to 20% on the ground that P.W.2-Doctor in his cross examination has stated that he did not know the nature of treatment taken by the appellant. The appellant has not produced any document to prove his avocation and income and he lost his income during the treatment period. In such circumstances, the Tribunal fixed a sum of Rs.15,000/- per month as notional income of the appellant, which is excessive. The amounts awarded by the Tribunal under different heads are not meagre 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 materials available on record.

8. It is the contention of the appellant that he suffered fracture of left shaft femur and now it is mal-united and he underwent two surgeries and screws and nails were implanted. P.W.2/doctor deposed that the fracture is united with widening and the appellant is facing difficulty to fold the leg and his movements restricted and assessed the disability of the appellant at 40%. The Tribunal reduced the percentage of disability to 20% on the ground that P.W.2/Doctor did not know the nature of treatment taken by the appellant and awarded a sum of Rs.20,000/- towards disability. The 2nd respondent-Insurance

Company did not let in any contra evidence to disprove the contention of P.W.2/Doctor and Ex.P10/disability certificate. Thus, considering the evidence of P.W.2-Doctor and Ex.P10-Disability Certificate, the percentage of disability suffered by the appellant is fixed at 30%. Therefore, the appellant is entitled to compensation for 30% of disability. The accident is of the year 2004 and a sum of Rs.1,500/- granted per percentage is confirmed. The compensation awarded by the Tribunal towards disability is enhanced to Rs.45,000/- (Rs.1,500 X 30% of disability). As per Ex.P4/discharge summary, the appellant has taken treatment in the MIOT Hospital, Chennai, as in-patient from 08.01.2004 to 19.01.2004 for a period of 12 days and surgery was conducted. Further, as per Ex.P7/discharge summary, he took continuous treatment in Spot Hospital, Chennai as inpatient from 26.09.2007 to 04.10.2007 for a period of 9 days and new screws were fixed on 27.09.2007. Totally, the appellant took inpatient treatment for 21 days and the Tribunal has not awarded any amount towards attendant charges and fixation of new screws. Therefore, the appellant is entitled to a sum of Rs.20,000/- towards attendant charges and Rs.10,000/- for future medical expenses (removal of screws). The sum of Rs.15,000/- awarded by the Tribunal towards loss of income, which is proper and the same is confirmed by this Court.

9.Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards extra nourishment and pain & suffering are meagre and the same are enhanced to Rs.15,000/- and Rs.20,000/- respectively. 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 or reduced
1.	Transportation, medical expenses, future medical expenses & attendant charges	1,75,000	1,75,000	Confirmed
2.	Extra nourishment	10,000	15,000	Enhanced
3.	Pain and suffering	15,000	20,000	Enhanced
4.	Permanent disability	20,000	45,000	Enhanced

5.	Loss of income	15,000	15,000	Confirmed
6.	Attendant charges	-	20,000	Granted
7.	Future medical expenses	-	10,000	Granted
	Total	Rs.2,35,000/-	Rs.3,00,000/-	Enhanced by Rs.65,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,35,000/- is hereby enhanced to Rs.3,00,000/- 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 the necessary Court fee, if any, on the enhanced compensation. The 2nd 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.No.360 of 2004 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Thiruvannamalai. 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 applications before the Tribunal. No costs.

gbi

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

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

+1cc to Mr.M.Malar, Advocate, S.R.No. 19312

+1cc to Mr.R.Vijaya Kamala Advocate, S.R.No. 19164

C.M.A.No.1774 of 2013

RSV (CO)
GN (20/01/2021)