



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2065 of 2013

L.Marudhachalam

.. Appellant/Petitioner

Vs.

1.M.R.Ruthrasamy

(R1 remained exparte before the Tribunal and hence, notice to R1 is dispensed with)

2.M/s.The National Insurance Co. Ltd.

Branch Office-1, Thanthai Periyar

Market Complex

P.B.No.15, Salem.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 15.12.2008 made in M.C.O.P.No.326 of 2005 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Salem.

For Appellant : Mr.M.Lokesh
for Mr.MA.P.Thangavel

For R2 : Mrs.R.Sreevidhya

J U D G M E N T

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 15.12.2008 made in M.C.O.P.No.326 of 2005 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Salem.



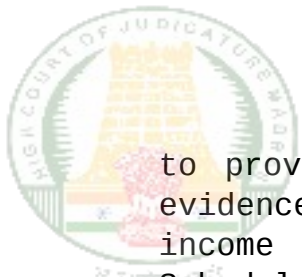
2.The appellant is claimant in M.C.O.P.No.326 of 2005 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Salem. He filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 25.05.2005.

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 bus belonging to the 1st respondent and directed both the 1st respondent as well as the 2nd respondent/Insurance Company being insurer of the said bus to pay a sum of Rs.1,26,000/- 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 the appellant was working as a power loom labourer and was earning a sum of Rs.5,000/- per month. The Tribunal without considering the same, erred in fixing notional income of the appellant as Rs.15,000/- per annum. In the accident, the appellant suffered right thigh fracture and multiple abrasions in right ankle. The appellant has taken treatment as in-patient in Sri Nithi hospital, from 29.05.2005 to 10.07.2005 and underwent two surgeries. The appellant examined himself as P.W.1 and the Doctor as P.W.2 to prove the injuries. P.W.2/Doctor examined the appellant and certified that the appellant suffered 45% disability. The Tribunal erroneously reduced the disability assessed by P.W.2/Doctor to 40% and awarded compensation. The appellant produced bills for medical expenses and the same were marked as Ex.A7. The Tribunal by inadvertence has not considered the medical bills marked as Ex.A7 and no amount was awarded towards medical expenses. The review petition filed by the appellant in this regard was dismissed by the Tribunal erroneously. The Tribunal ought to have awarded compensation under medical bills. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant failed



to prove the avocation and income. In the absence of material evidence with regard to avocation and income, the Tribunal fixed income of the appellant as Rs.15,000/- per annum as per II Schedule of the Motor Vehicles Act and the same is in order. The appellant has not produced any document to show that he suffered functional disability and lost his earning capacity. In the absence of any document with regard to functional disability, the Tribunal erred in adopting multiplier method to award compensation. In view of the excess amounts awarded by the Tribunal, the appellant is not entitled to any 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 2nd respondent/Insurance Company and perused the entire materials on record.

8. It is the contention of the appellant that he was working as a power loom labourer and was earning a sum of Rs.5,000/- per month. The appellant failed to substantiate the said contention. In the absence of any material evidence with regard to income, the Tribunal fixed notional income of the appellant as Rs.15,000/- per annum as per the II Schedule of the Motor Vehicles Act. The Tribunal is not correct in fixing income of the appellant as per II Schedule, when the appellant is not a minor and earning member. The accident is of the year 2005 and the notional income of the appellant is fixed at Rs.3,000/- per month. P.W.2/Doctor after examining the appellant has certified that he suffered 45% disability. The 2nd respondent/Insurance Company did not examine any Doctor to disprove the evidence of P.W.2/Doctor. The Tribunal fixed disability of the appellant as 40% for loss of earning power and awarded compensation by adopting multiplier method. The Tribunal has not converted the disability to whole body and granted compensation for 40% by adopting multiplier method. In view of the same, the appellant is not entitled to compensation for 45% disability. The compensation awarded by the Tribunal towards loss of earning power is modified to Rs.2,30,400/- (Rs.3,000/- X 12 X 16 X 40/100).

9. According to the appellant, he has filed medical bills for the amounts spent by him for the treatment and the same was marked as Ex.A7. But the Tribunal by inadvertence failed to



consider Ex.A7 and has not awarded any compensation towards medical expenses. The appellant has also produced xerox copies of Ex.A7 medical bill series and the same were marked with objections. The appellant has marked the discharge summary as Ex.A6 to prove that he has taken treatment as in-patient in Sri Nithi Hospital from 29.05.2005 to 10.07.2005. The 2nd respondent/Insurance Company has not let in any evidence to disprove the discharge summary and medical bills. In view of the same, the appellant is entitled to a sum of Rs.59,241.89 towards medical expenses as claimed in Ex.A7 medical bill series. 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.	Loss of earning capacity	96,000	2,30,400	Enhanced
2.	Pain and suffering	10,000	10,000	Confirmed
3.	Transportation	5,000	5,000	Confirmed
4.	Extra nourishment	5,000	5,000	Confirmed
5.	Attendant charges	5,000	5,000	Confirmed
6.	Loss of income	5,000	5,000	Confirmed
7.	Medical expenses	-	59,241.89	Granted
	Total	1,26,000	3,19,641.89 rounded off to 3,19,650	Enhanced by Rs.1,93,650/-

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



Rs.1,26,000/- is hereby enhanced to Rs.3,19,650/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.1,93,650/- enhanced by this Court as per the order of this Court dated 17.06.2013 made in M.P.No.3 of 2013 in C.M.A.SR.No.27966 of 2012. The respondents are 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-VIII)

//True Copy//

Sub Assistant Registrar

kj

To

1.The Chief Judicial Magistrate
Motor Accident Claims Tribunal
Salem.

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

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.38515

C.M.A.No.2065 of 2013

VBA(CO)
SB(01/10/2021)