

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2830 of 2015

Saravanan

... Appellant

Vs.

1.G.Krishnan

2.United India Insurance Co. Ltd.,

Divisional Office at No.4 & 5

Kandasamy Mudali Street,

Ranipet,

3.Priya

4.IFFCO Tokia General Insurance Co. Ltd.,

No.306-A, 1st Floor Katpadi Main Road,

Virthampet, Vellore-6.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.10.2015 made in M.C.O.P.No.93 of 2012 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge, Ranipet).

For Appellants: Mr.V.Parivallal

For Respondents: M/s.I.Malar for R2

M/s.C.R.Krishnamoorthy for R4

No Appearance for R3

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 28.10.2015 made in M.C.O.P.No.93 of 2013 on the file of the Motor Accident Claims Tribunal, the learned Subordinate Judge, Ranipet.

2.The appellant is the claimant in M.C.O.P.No.93 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Ranipet. He filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of their son, who died in the accident that took place on 31.01.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent act by the driver of the mahindra van belonging to the first respondent, insured with the second respondent as well as negligent act on the part of the appellant, fixed 50% contributory negligence on the part of both the appellant as well as the driver of the van and directed the respondents 1 and 2 to jointly and severally pay a sum of Rs.1,67,880/- as compensation to the appellant. The Tribunal dismissed the claim petition as against the respondents 3 and 4.

4.Challenging the portion of the award fixing 50% negligence on the part of the apepllant as well as not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended that in the absence of any evidence let in by the respondents, the Tribunal erred in holding that the appellant also contributed the negligence to the accident. The appellant examined himself and proved that the accident occurred due to the negligence on the part of the first respondent, who suddenly stopped the van in the middle of the road. In the accident, the appellant sustained fracture in the left leg above the knee, below the knee and mandible fracture on the face. Due to the injuries sustained by the appellant, he lost his earning capacity totally and the Tribunal ought to have adopted multiplier method instead of percentage method. The Tribunal has not awarded any amount towards future medical expenses and attendant charges. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant rode the motorcycle in a rash and negligent manner and dashed against the back side of the van. The Tribunal ought to have fixed entire negligence on the part of the appellant. The appellant has not proved that he suffered functional disability and hence, he is not entitled for compensation by adopting multiplier method. The amounts awarded by the Tribunal are not meagre and prayed for dismissal of the appeal.

7.The learned counsel for the fourth respondent/Insurance Company contended that the fourth respondent was impleaded only as a formal party. The Tribunal dismissed the claim petition as against the fourth respondent and the fourth respondent is not a necessary party in this appeal.

8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second and fourth respondent and perused the entire materials on record.

9. It is the contention of the appellant that the first respondent who was riding his mahindra van in front of the appellant, without any signal, stopped the van in the middle of the road to enquire the pedestrian for direction. On the other hand, the first respondent has stated in the counter statement that he stopped the vehicle on the extreme left side of the road with indicator and went for lunch along with the occupants of the van. This contention of the first respondent is not correct. In the complaint, he has stated that he stopped the van to enquire the pedestrian about direction. In addition to that, the first respondent or the second respondent has not let in any evidence to substantiate their contention. The Tribunal considering the evidence of the appellant as P.W.1 and contents in the FIR, held that the first respondent suddenly stopped the vehicle to enquire the pedestrian for direction. The Tribunal held that the appellant has also contributed negligence as he dashed against the vehicle driven by the first respondent in back side of the van and fixed 50% contributory negligence on the part of the appellant and the same is excessive. In the facts and circumstances of the case, 50% contributory negligence fixed on the part of the appellant is reduced to 20%.

10. As far as the quantum of compensation is concerned, the appellant, apart from examining himself as P.W.1, examined P.W.2 /Doctor and marked discharge summary and disability certificate to prove the disability suffered by him. The Tribunal considering the evidence of P.W.2 and also medical report, accepted the percentage of disability certified by the Doctor. The appellant claimed that he is working as a JCB mechanic and was earning a sum of Rs.20,000/- per month and he totally lost his earning capacity. P.W.2/Doctor deposed that the appellant could not squat and sit. The said evidence is not controverted by the respondents. The appellant being a mechanic has to sit down while repairing the vehicle. In view of the nature of work done by the appellant as well as the disability suffered by the appellant, the appellant is entitled compensation by adopting multiplier method. The appellant suffered partial permanent disability at 48% and therefore, 48% disability is reduced to 30%.

11. According to the appellant, he was working as a JCB mechanic and was earning a sum of Rs.20,000/- per month. The Tribunal has fixed the income of the appellant at Rs.9,360/- as per Ex.P5/Salary Slip and the same is proper. The appellant is aged 38 years at the time of accident and the multiplier

applicable is '15'. The compensation awarded by the Tribunal towards disability is modified to Rs.5,05,440/- [Rs.9,360/- x 12 x 15 x 30/100]. The appellant has taken treatment as in-patient in C.M.C.Hospital, Vellore, in 3 different spells, i.e., from 31.01.2012 to 08.02.2012, from 11.02.2012 to 17.02.2012 and again admitted and discharged on 07.05.2012. The amounts awarded by the Tribunal towards extra nourishment, transport to hospital, attendant charges and damage to clothes & articles are meagre. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal are hereby enhanced to Rs.25,000/- towards extra nourishment, Rs.10,000/- towards transport to hospital, Rs.25,000/- towards attendant charges and Rs.3,000/- towards damage to clothes and articles. The amounts granted by the Tribunal under the other heads are just and reasonable and hence, they 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
1.	Transport to Hospital	5,000/-	10,000/-	enhanced
2.	Extra nourishment	5,000/-	25,000/-	enhanced
3.	Attendant charges	5,000/-	25,000/-	enhanced
4.	Medical bills	1,31,500/-	1,31,500/-	confirmed
5.	Damages to clothings & articles	1,000/-	3,000/-	enhanced
6.	Loss of income	19,260/-	19,260/-	confirmed
7.	Pain & sufferings	25,000/-	25,000/-	confirmed
8.	Disability	1,44,000/-	5,05,440/-	enhanced
	Total	Rs.3,35,760/-	Rs.7,44,200/-	
	50% of the award amount	Rs.1,67,880/-	-	-
	80% of the award amount	-	Rs.5,95,360/-	Enhanced by Rs.4,27,480/-

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

Rs.1,67,880/- is hereby enhanced to Rs.5,95,360/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. The respondents 1 and 2 are jointly and severally directed to deposit 80% of the award amount now determined by this Court, i.e., Rs.5,95,360/- 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/claimant 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 IV)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal/
The Subordinate Judge, Ranipet.

2.The Section Officer,
VR Section,
High Court,
Madras.

+2cc to Mr.V.Parivallal, Advocate Sr.5196
+1cc to Mr.C.R.Krishnamoorthy, Advocate Sr.4938
+1cc to M/s.I.Malar, Advocate Sr.5180

C.M.A.No.2830 of 2015

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