

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 1737 of 2016

P. Kandasamy ... Appellant /Petitioner

Vs.

1.Sakthivel

2.M/s. Reliance General Insurance Co. Ltd.,
East Wing, 5th Floor,
Centenary Building, M.G. Road,
Bangalore, Karnataka. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 17.09.2014, made in M.C.O.P. No. 213 of 2008, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Namakkal.

For Appellant : Mr. M. Aniruthan

For Respondents : No appearance

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 17.09.2014, made in M.C.O.P. No. 213 of 2008, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Namakkal.

2.The appellant-claimant filed M.C.O.P. No. 213 of 2008, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Namakkal, claiming a sum of Rs.12,00,000/- as compensation for the injuries sustained by him in the accident that took place on 24.11.2007.

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 Car belonging to the 1st respondent and directed the respondents to jointly and severally pay a sum of Rs.3,50,319/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 17.09.2014, made in M.C.O.P. No. 213 of 2008, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended that at the time of accident, he was running a Poultry Farm, working as a heavy goods vehicle Driver cum Agriculturist and was earning a sum of Rs.20,000/- per month. The Tribunal has fixed a meagre sum of Rs.4,000/- per month as notional income and awarded only a sum of Rs.20,000/- towards partial loss of income for a period of 5 months. Due to the accident, the appellant sustained fracture in the right leg and underwent surgery and took treatment in Maruthi Hospital, Namakkal, then shifted to Ganga Hospital, Jem Hospital and finally took treatment at Sri Ramakrishna Hospital, Coimbatore. P.W.2- Doctor examined the appellant and assessed that the appellant suffered 45% disability. The Tribunal without giving any valid reason, reduced the same to 25% and awarded meagre sum of Rs.1,08,000/- and Rs.20,000/- towards disability and partial loss of earning respectively. The amounts awarded by the Tribunal towards transportation and extra nourishment are also meagre. In any event, the total compensation awarded by the Tribunal is meagre and prayed for enhancement of the compensation.

6.Though notice has been served on the respondents and their names are printed in the cause list, there is no representation for them either in person or through counsel.

7.Heard the learned counsel appearing for the appellant and perused the materials available on record.

8.It is the contention of the appellant that due to the accident, he suffered fracture of right leg and underwent surgery. P.W.2 - Doctor assessed that the appellant suffered 45% disability. The Tribunal reduced the percentage of disability suffered by the appellant to 25% on the ground that the assessment of P.W.2 - Doctor is on the higher side, which is not proper. Also, the respondents did not let in any contra evidence to disprove the evidence of P.W.2 Doctor and disability certificate marked as Ex.P17. Therefore, considering the nature of injuries and the materials on record, the disability suffered

by the appellant is fixed at 35%. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.2,64,600/- [Rs.7,000/- x 12 x 9 x 35%]. The appellant has contended that he took treatment as in-patient in Maruthi Hospital, Namakkal, then shifted to Ganga Hospital, Coimbatore and subsequently to Jem Hospital and finally took treatment at Sri Ramakrishna Hospital. Considering the discharge summaries marked as Exs.P6 to P10 and the nature of disabilities suffered by the appellant, the meagre amounts awarded by the Tribunal towards transportation and pain and suffering are enhanced to Rs.20,000/- each.

8(a) According to the appellant, at the time of accident, he was running a Poultry Farm, working as a heavy goods vehicle Driver cum Agriculturist 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 sum of Rs.4,000/- per month as notional income. The accident is of the year 2007 and the notional income fixed by the Tribunal is meagre. Therefore, a sum of Rs.7,000/- per month is fixed as the notional income of the appellant. Due to the injuries, the appellant would not have worked atleast for a period of six months. Hence, the amounts awarded by the Tribunal towards partial loss of earning is modified to Rs.42,000/- (Rs.7,000/- 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.	Partial loss of earning	20,000/-	42,000/-	Enhanced
2.	Pain and suffering	10,000/-	20,000/-	Enhanced
3.	Transportation	10,000/-	20,000/-	Enhanced
4.	Extra nourishment	5,000/-	5,000/-	Confirmed
5.	Disability	1,08,000/-	2,64,600/-	Enhanced
6.	Medical expenses	1,97,319/-	1,97,319/-	Confirmed
	Total	3,50,319/-	5,48,919/-	Enhanced by Rs.1,98,600/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.3,50,319/- is enhanced to Rs.5,48,919/- along with interest and costs. The respondents are 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. 213 of 2008. 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.1,98,600/-. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsa
To

1. The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal),
Namakkal.

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

+1cc to M/s.M.Aniruthan, Advocate Sr.14898

C.M.A. No. 1737 of 2016

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