

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.269 of 2013

Ramalingam

.. Appellant

Vs.

1.Marikani

2.Jaishankar

3.The United India Insurance Company Ltd.,
No.46, Katpadi Road,
T.K.M.Complex,
Vellore.

4.The New India Assurance Company,
No.106, Big Street,
Thiruvannamalai.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.08.2007 made in M.C.O.P.No.07 of 2005 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Thiruvannamalai.

For Appellant : Mr.F.Terry Chellaraja

For Respondents: Mr.C.Paranthaman for R3
Mr.C.Ramesh Babu for R4

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 02.08.2007 made in M.C.O.P.No.07 of 2005 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Thiruvannamalai.

2.The appellant is the claimant in M.C.O.P.No.07 of 2005 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Thiruvannamalai. He filed the above said claim petition, claiming a sum of Rs.1,00,000/- as compensation for the injuries sustained by him in the accident that took place on 08.11.2003.

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 first respondent, insured with the third respondent and directed the respondents 1 & 3 to jointly and severally pay a sum of Rs.25,000/- as compensation to the appellant. The claim petition was dismissed as against the respondents 2 and 4.

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 rupture of tympanic membrane, loss of teeth and grievous injuries all over the body. The appellant examined the Doctor as P.W.2 and proved the injury and disability. P.W.2-Doctor assessed the disability of the appellant as 30% and marked the disability certificate as Ex.P7. The Tribunal without considering Ex.P5/wound certificate, Ex.P6/Graphic (TPR) chart and Ex.P7/disability certificate, awarded a meagre sum of Rs.25,000/- altogether towards future damages, medical expenses, pain & sufferings and mental agony. The Tribunal considering the nature of injuries sustained by the appellant, ought to have awarded compensation separately towards permanent disability, pain & sufferings, loss of amenities, discomfort of life and loss of earning power. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the third respondent/Insurance Company contended that P.W.2-Doctor is Ortho Specialist and not competent to give evidence with regard to loss of hearing. Therefore, the consolidated sum of Rs.25,000/- awarded by the Tribunal towards future damages, medical expenses, pain & sufferings and mental agony is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.The learned counsel appearing 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. Therefore, the fourth respondent is not a necessary party in this appeal and prayed for dismissal of the appeal as against the fourth respondent.

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

9. It is the contention of the appellant that in the accident, he sustained rupture of tympanic membrane, loss of teeth and grievous injuries all over the body. The appellant examined Dr. Raveendran as P.W.2, who has assessed the disability of the appellant as 30% and marked wound certificate, Graphic (TPR) Chart and disability certificate as Exs.P5 to P7 respectively, to prove the injuries. The Tribunal awarded a consolidated sum of Rs.25,000/- altogether towards future damages, medical expenses, pain & sufferings and mental agony, holding that the appellant has failed to examine the ENT surgeon in order to prove the nature of ear injury sustained by him. The said reason is not proper. The respondents have not let in any evidence to disprove the percentage of disability assessed by P.W.2/Doctor and the disability certificate marked as Ex.P7. Considering the nature of injuries sustained by the appellant, the appellant is entitled to compensation for 30% disability at the rate of Rs.1,000/- per percentage of disability. Thus, a sum of Rs.30,000/- (Rs.1,000/- X 30%) is awarded towards permanent disability. In addition to that, the sum of Rs.5,000/-, Rs.500/- and Rs.2,000/- are awarded separately towards pain & sufferings, damage to clothes and extra nourishment respectively. In view of the above, the consolidated sum of Rs.25,000/- awarded by the Tribunal as compensation is liable to be set aside and it is hereby set aside. 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.	Future damages, medical expenses, pain & sufferings and mental agony	25,000/-	-	set aside
2.	Disability	-	30,000/-	granted
3.	Pain & sufferings	-	5,000/-	granted
4.	Damage to clothes	-	500/-	granted
5.	Extra nourishment	-	2,000/-	granted
	Total	Rs.25,000/-	Rs.37,500/-	Enhanced by Rs.12,500/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.25,000/- is hereby enhanced to Rs.37,500/- 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 amount of compensation. The respondents 1 and 3 are directed to jointly and severally 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 by making necessary applications before the Tribunal. This appeal is dismissed as against the respondents 2 and 4. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vkr

To

1. The Additional Subordinate Judge
Motor Accident Claims Tribunal,
Thiruvannamalai.

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

+2cc to Mr.C.Paranthaman, Advocate, S.R.No. 23919

+1cc to Mr.C.Ramesh Babu, Advocate, S.R.No. 24918

+1cc to Mr.M.Malar, Advocate, S.R.No. 24240

C.M.A.No.269 of 2013

BP (CO)
GN (12/05/2021)