

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2751 of 2013

S.Simmanathan

.. Appellant

Vs.

1.G.Thangamani

2.New India Assurance Company Ltd.
No.45, Moore street
Chennai-1.

.. Respondents

(R1 remained exparte in lower Court
and hence, notice is dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 15.03.2013 made in M.C.O.P.No.3747 of 2008 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mr.C.Ramesh Babu

R1 : Exparte

J U D G M E N T

The matter is heard through "Video-Conferencing".

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 15.03.2013 made in M.C.O.P.No.3747 of 2008 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.3747 of 2008 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by

Page numbers

him in the accident that took place on 23.05.2008.

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 lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said lorry to pay a Rs.9,56,540/- 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 due to grievous injuries and fractures sustained by the appellant in the accident, he underwent surgery and took treatment as in-patient in Fortis Malar Hospital on four different spells for 36 days. Due to the injuries, the appellant has become permanently disabled. The appellant was aged 22 years at the time of accident. Due to the injuries, he could not have normal life, he has become impotent, cannot have marital life and cannot have children. The appellant examined P.W.3 and P.W.4/Doctors who deposed about the injuries in detail and certified that the total disablement of the appellant as 165%. The Tribunal erroneously reduced the disability to 55%. The appellant is entitled to compensation for 100% loss of earning power. The Tribunal has not awarded any compensation towards attendant charges, loss of amenities and loss of marital life. The total compensation 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 P.W.3 and P.W.4/Doctors are stock witness and they did not examine the appellant clinically and scientifically. They assessed the disability without conducting any scientific test. P.W.3 and P.W.4/Doctors did not assess the disability of the appellant for the whole body. Considering the disability certificate, the Tribunal fixed the disability for whole body and awarded compensation by adopting multiplier method. The compensation awarded by the Tribunal under different heads are excessive. The appellant has not made out any case for 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.

Page numbers

8. From the materials available on records, it is seen that the appellant has sustained grievous multiple injuries and fracture in hip. Due to the injuries and surgery, he has suffered permanent disability, became impotent and lost pleasure of marital life. P.W.3 and P.W.4/Doctors have deposed about the nature of injuries and treatment taken and certified that the appellant suffered 165% disability for two parts of the body. The Tribunal converted the same to whole body, fixed 55% disability and adopted multiplier method. The appellant was aged 19 years at the time of accident. The Tribunal applied multiplier 16, which is not proper. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the multiplier applicable is 18. It is the contention of the appellant that he was doing textile business at the time of accident and was earning a sum of Rs.7,500/- per month. The appellant has not filed any document to prove the avocation and income. In the absence of any material evidence, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the appellant. The accident is of the year 2008 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.5,000/- per month is fixed as notional income of the appellant. Thus, the compensation awarded by the Tribunal towards permanent disability and loss of earning power is hereby modified to Rs.5,94,000/- (Rs.5,000/- X 12 X 18 X 55/100).

8(i) The appellant has taken treatment as in-patient in Fortis Malar Hospital from 23.05.2008 to 13.06.2008, 05.08.2008 to 08.08.2008, 29.08.2008 to 06.09.2008 and 04.10.2008 to 06.10.2008 on four different spells for a total period of 36 days. The Tribunal has not awarded any amount towards attendant charges. The appellant has suffered permanent disability. Hence, the appellant is entitled to compensation for loss of amenities. Due to the injuries and disability, the appellant has become impotent and lost his marital life. In view of the same, Rs.25,000/-, Rs.50,000/- and Rs.1,00,000/- are awarded towards attendant charges, loss of amenities and loss of marital life respectively. The amounts awarded by the Tribunal towards transportation and extra nourishment are meagre and hence, the same are hereby enhanced to Rs.10,000/- and Rs.20,000/- respectively. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed.

9. The Courts have power to grant just compensation more than the amount claimed by the claimant in the facts and circumstances of each case. In the present case, the appellant was aged 19 years at the time of accident and lost his normal

Page numbers

life including marital life. Considering the nature of injuries and disability suffered by the appellant, he is entitled to more compensation than the amount claimed by him in the claim petition. 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.	Permanent disability and loss of earning power	4,75,200	5,94,000	Enhanced
2.	Loss of income	36,000	36,000	Confirmed
3.	Transportation	5,000	10,000	Enhanced
4.	Extra nourishment	10,000	20,000	Enhanced
5.	Damage to clothing	1,000	1,000	Confirmed
6.	Medical expenses	3,59,340	3,59,340	Confirmed
7.	Pain and suffering	70,000	70,000	Confirmed
8.	Attendant charges	-	25,000	Granted
9.	Loss of amenities	-	50,000	Granted
10.	Loss of marital life	-	1,00,000	Granted
	Total	9,56,540	12,65,340	Enhanced by Rs.3,08,800 /-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.9,56,540/- is hereby enhanced to Rs.12,65,340/- 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 necessary Court fee, if any, on the enhanced compensation. The

Page numbers

2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and cost, 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

//True Copy//

Sub Assistant Registrar

kj

To

1.The III Judge
Motor Accident Claims Tribunal
Small Causes Court, Chennai.

Copy to:
The Section Officer
V.R.Section
High Court, Chennai.

+1cc to M/s.C.Ramesh Babu, Advocate SR.33920

+1cc to M/s.K.Varadha Kamaraj, Advocate SR.33827

C.M.A.No.2751 of 2013

RP(CO)
CB(12/02/2021)

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Page numbers