

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2944 of 2013

Shankar

.. Appellant/Petitioner

Vs.

1.Nagaraji Naidu

2.The Divisional Manager,

Bajaj Allianz General Insurance Co. Ltd.,

Anna salai, Thindivanam Road,

Near Petrol Bunk,

Thiruvannamalai Town.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 16.02.2012, made in M.C.O.P. No. 1016 of 2006, on the file of the Additional Sub Court, (Motor Accident Claims Tribunal), Thiruvannamalai.

For Appellant : Mr. F. Terry Chellaraja

For Respondents: Mr. J.K. Premkumar (for R2)

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 16.02.2012, made in M.C.O.P. No. 1016 of 2006, on the file of the Additional Sub Court, (Motor Accident Claims Tribunal), Thiruvannamalai.

2.The appellant-claimant filed M.C.O.P. No. 1016 of 2006, on the file of the Additional Sub Court, (Motor Accident Claims Tribunal), Thiruvannamalai, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 09.05.2006.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver-cum-owner of the Maruti Car and directed the 2nd respondent as insurer of the said vehicle to pay a sum of Rs.1,05,700/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 16.02.2012, made in M.C.O.P. No. 1016 of 2006, the appellant has come out with the present appeal.

5. Learned counsel appearing for the appellant contended that in the accident, the appellant sustained injuries in the right eyebrow, right eye, left eye, left eyebrow, nose, left knee, right knee, fracture of radius middle in the 1/3 and lower 1/3 above elbow in the right wrist, nostril and multiple injuries all over the body. P.W.2 - Ortho Doctor assessed that the appellant suffered 30% permanent disability and P.W.3 - Eye Doctor assessed that the appellant suffered 35% disability. The appellant has taken treatment as inpatient in Thiruvannamalai Government Hospital from 10.05.2006 to 25.05.2006 and subsequently, in Government General Hospital, Chennai from 05.06.2006 to 08.06.2006 and thereafter from 10.07.2006 to 27.09.2006. The Tribunal ought to have applied multiplier method in awarding compensation towards disability. The amounts awarded by the Tribunal towards attendant charges, disability, transportation charges, extra nourishment, pain and suffering and loss of income are meagre. The Tribunal has not awarded any amount towards damage to clothes, loss of amenities, mental agony and future medical expenses. In any event, the total compensation granted by the Tribunal under different heads are meagre and prayed for enhancement of the same.

6. Per contra, the learned counsel appearing for the 2nd respondent contended that in the absence of any material evidence to prove that the appellant suffered functional disability, the Tribunal rightly granted compensation towards disability by applying percentage method. The total compensation granted by the Tribunal is not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

8. It is the contention of the appellant that in the accident, he suffered multiple injuries all over the body and has taken treatment as in-patient in Thiruvannamalai Government Hospital from 10.05.2006 to 25.05.2006, subsequently, in Government General Hospital, Chennai in two different spells viz., from 05.06.2006 to 08.06.2006 and 10.07.2006 to 27.09.2006. P.W.2- Ortho Doctor has assessed that the appellant suffered 30% permanent disability and P.W.3 - Eye Doctor has

assessed that the appellant suffered 35% disability in vision. The respondents did not let in any evidence to disprove the evidence of P.W.2 and P.W.3 - Doctors and disability certificates marked as Exs.P8 & P10 respectively. The Tribunal considering the evidence of P.W.2-Doctor, has rightly granted a sum Rs.60,000/- (Rs.2,000/- x 30% disability) towards permanent disability by awarding a sum of Rs.2,000/- per percentage for 30% disability, but awarded only a meagre sum of Rs.20,000/- towards 35% disability assessed by the P.W.3 - Doctor. Considering the evidence of P.W.3-Doctor and disability certificate issued by him, the appellant is entitled to a sum of Rs.70,000/- (Rs.2,000/- x 35% disability) towards disability in eye, by awarding a sum of Rs.2,000/- per percentage for 35% disability. The Tribunal has not awarded any amount towards loss of amenities. Considering the disability suffered by the appellant, this Court awards a sum of Rs.20,000/- towards loss of amenities. Considering the period of treatment taken and the nature of injuries suffered by the appellant, the amounts awarded by the Tribunal towards attendant charges, transportation and extra nourishment are meagre and hence, the same are enhanced to Rs.29,400/-, Rs.5,000/- and Rs.25,000/- respectively.

9.The appellant contended that at the time of accident, he was working as a Building Maistry and was earning a sum of Rs.6,000/- per month. He has failed to prove 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.3,000/- per month as notional income of the appellant. The accident is of the year 2006 and the monthly income fixed by the Tribunal is meagre. Considering the year of accident and the nature of work, this Court fixes a sum of Rs.5,000/- per month as notional income of the appellant. Due to the injuries sustained in the accident, the appellant would not have worked atleast for a period of four months. Hence, the amount awarded by the Tribunal towards loss of income is enhanced to Rs.20,000/- (Rs.5,000/- x 4 months). The amounts awarded by the Tribunal under 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.	Permanent disability	60,000/-	60,000/-	Confirmed

2.	Disability in the eye	20,000/-	70,000/-	Enhanced
3.	Loss of income	6,000/-	20,000/-	Enhanced
4.	Transportation	3,000/-	5,000/-	Enhanced
5.	Extra nourishment	3,000/-	25,000/-	Enhanced
6.	Attendant charges	3,000/-	29,400/-	Enhanced
7.	Medical expenses	700/-	700/-	Confirmed
8.	Pain and suffering	10,000/-	10,000/-	Confirmed
9.	Loss of amenities	-	20,000/-	Granted
	Total	1,05,700/-	2,40,100/-	Enhanced by Rs.1,34,400/-

10. In the result, the appeal is partly allowed and the amounts awarded by the Tribunal at Rs.1,05,700/- is enhanced to Rs.2,40,100/- along with interest and costs. The 2nd respondent is 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. 1016 of 2006. 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.1,34,400/-. No costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Thiruvannamalai.

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

+1 CC to Mr.T.K. Premkumar, Advocate sr 24466.

+1 CC to M/s.M. Malar, Advocate sr 24402.

C.M.A. No. 2944 of 2013

LN (CO)
SP(20/08/2020)



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