

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.631 of 2020

Vinod Kumar

.. Appellant/Petitioner

Vs.

1.S.Prabu (set Exparte before the Tribunal)

2.The Divisional Manager,

United India Insurance Company Limited,

M.M.Reddy Complex,

Bangalore Road, Hosur,

Krishnagiri District.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.03.2015 made in M.C.O.P.No.1766 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant : Mr.P.Rajendiran

For R2 : Ms.I.Malar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 18.03.2015 made in M.C.O.P.No.1766 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

2.The appellant is the claimant in M.C.O.P.No.1766 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri. He filed the above said claim petition, claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained by him in the accident that took place on 20.04.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle bearing Registration No.TN 24 Z 6863 belonging to the 1st respondent and

directed the 2nd respondent-Insurance Company, being the insurer of the motorcycle to pay a sum of Rs.6,31,176/- 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 the appellant sustained grievous injuries in the accident and due to the same, he could not able to do his work as he was doing earlier. P.W.2/Doctor examined the appellant and certified that appellant suffered 65% disability and issued Ex.P7/disability certificate to that effect. The appellant was aged 25 years at the time of accident and was working as Service Engineer in M/s.Maha Electronics, Hosur and was earning a sum of Rs.12,600/- per month. But the Tribunal has fixed a meagre sum of Rs.5,500/- per month as notional income of the appellant and awarded compensation towards loss of income only for three months. Due to the injuries sustained by him in the accident, he lost his earning capacity and the Tribunal ought to have adopted multiplier method for awarding compensation towards future loss of income. The amounts awarded by the Tribunal towards pain and sufferings, future medical expenses, transportation and extra nourishment are meagre. The Tribunal has not awarded any amount towards loss of amenities and granted interest only at the rate of 6% per annum. The Tribunal ought to have granted interest at the rate of 9% per annum and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant failed to prove the avocation and income. In the absence of any material evidence with regard to avocation and income, a sum of Rs.5,500/- per month fixed by the Tribunal as notional income of the appellant is not meagre. The appellant has not proved that he lost his earning capacity and hence, he is not entitled to compensation towards future loss of income by adopting multiplier method. The amounts awarded by the Tribunal under different heads are not meagre and the appellant is not entitled to any amount towards loss of amenities. The interest granted by the Tribunal at 6% per annum is proper. 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.

8. From the award passed by the Tribunal, it is seen that in the accident the appellant sustained grievous injuries all over his body and to prove the nature of injuries and disability suffered by him, the appellant examined himself as P.W.1 and P.W.2/Doctor. P.W.2/Doctor examined the appellant and certified that appellant suffered 65% disability and issued Ex.P7/disability certificate to that effect. The Tribunal considering the evidence of P.W.2/Doctor and Ex.P7/disability certificate, has awarded a sum of Rs.2,60,000/- towards disability by fixing a sum of Rs.4,000/- per percentage of disability, which is proper. The appellant has not proved that he suffered functional disability and hence, he is not entitled to compensation towards future loss of income by adopting multiplier method. It is the contention of the appellant that he was aged 25 years at the time of accident and was working as Service Engineer in M/s.Maha Electronics, Hosur and was earning a sum of Rs.12,600/- per month. But he failed to substantiate the same. Hence, the Tribunal fixed a sum of Rs.5,500/- per month as notional income of the appellant and awarded compensation towards loss of income for three months. The accident occurred in the year 2011 and the monthly income fixed by the Tribunal is meagre. Considering the year of accident, age and nature of work done by the appellant, a sum of Rs.10,000/- per month is fixed as notional income of the appellant. Due to the injuries sustained by the appellant, he would not have attended his work atleast for a period of 4 months. Thus, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.40,000/- [Rs.10,000/- X 4 months]. The amounts awarded by the Tribunal towards disability, pain and sufferings, extra nourishment and transportation, medical expenses, future medical expenses and attendant charges are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Amount confirmed, enhanced or granted (Rs)
1.	Disability	2,60,000/-	2,60,000/-	Confirmed
2.	Pain and sufferings	50,000/-	50,000/-	Confirmed
3.	Loss of income	16,500/-	40,000/-	Enhanced
4.	Extra nourishment and Transportation	20,000/-	20,000/-	Confirmed

5.	Medical expenses	1,89,676/-	1,89,676/-	Confirmed
6.	Future medical expenses	75,000/-	75,000/-	Confirmed
7.	Attendant charges	20,000/-	20,000/-	Confirmed
	Total	Rs.6,31,176/-	Rs.6,54,676/-	Enhanced by Rs.23,500/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,31,176/- is hereby enhanced to Rs.6,54,676/- together with interest at the rate of 6% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to 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, to the credit of M.C.O.P.No.1766 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri. 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. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court. It is made clear that the appellant is not entitled to any interest for Rs.23,500/- the amount now enhanced by this Court, as per the order of this Court dated 11.02.2020 made in C.M.P.No.2557 of 2020 in C.M.A.No.SR.10342 of 2020. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Krishnagiri.

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

+1 cc to Mr.T.Ravichandran Advocate sr15272
+1 cc to Mr.G.Punniakotti Advocate sr16044

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