

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.278 of 2020

Mumath Khalid

.. Appellant

Vs.

1.Anand

2.Royal Sundaram General Insurance Company Limited
No.186/5, 3rd Floor,
Royal Towers New Bus Stand Road,
Meyyanur, Salem - 636 004. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.11.2019 made in M.C.O.P.No.333 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant : Mr.T.Panchatsaram

For R2 : Ms.C.Harini
for Mr.N.Vijayaraghavan

सत्यमेव जयते
J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 12.11.2019 made in M.C.O.P.No.333 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

2.The appellant is claimant in M.C.O.P.No.333 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri. He filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 24.12.2016.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver cum owner of the Maruthi Omni Van and directed the 2nd respondent/Insurance Company being insurer of the said Maruthi Omni Van to pay a sum of Rs.3,27,500/- as compensation to the appellant.

4.Not being satisfied with the quantum of compensation 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 he was working as Muthavalli in Rashid Majid, South Majid and was earning a sum of Rs.20,000/- per month. The appellant was aged 32 years at the time of the accident. The Tribunal has fixed a meagre sum of Rs.8,500/- as monthly income of the appellant. It is further contended that the appellant has sustained grievous injuries and he could not continue his work as he was doing earlier. The Tribunal ought to have adopted multiplier method while awarding compensation towards future loss of income. The amounts 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 the appellant has not produced any document to prove that he suffered functional disability. In the absence of any documentary evidence to prove that the appellant suffered functional disability, the Tribunal applied percentage method and awarded compensation. The Tribunal after considering all the materials available on record in proper perspective, has awarded compensation, which is not excessive 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 all the materials available on record.

8.It is the contention of the appellant that he was aged 32 years at the time of accident and was earning a sum of Rs.20,000/- per month by working as Muthavalli in Rashid Majid, South Majid. In the absence of any evidence with regard to avocation and income of the appellant, the Tribunal fixed a sum of Rs.8,500/- as monthly income of the appellant and awarded a sum of Rs.25,500/- towards loss of income for a period of three months, which is meagre. The accident is of the year 2016 and a sum of Rs.13,000/- is fixed as monthly income of the appellant. Due to the injuries sustained by the appellant, he would not have attended his work atleast for a period of six months. A sum

of Rs.78,000/- (Rs.13,000/- X 6) is awarded towards loss of income for a period of six months. According to the appellant, he has sustained laceration of 10 x 7 x 3 cm right forearm near the wrist joint, fracture of both bones forearm, abnormal mobility and tenderness of left elbow - elbow joint dislocation, laceration of 3 x 1 x 1 cm root of the nose and multiple injuries all over the body. He has taken treatment as in-patient from 24.12.2016 to 09.01.2017 in Government Hospital, Krishnagiri. The appellant has produced Ex.P2/wound certificate and Ex.P3/X-ray report to prove the same. The Medical Board examined the appellant and assessed 60% disability. The disability certificate issued by the Medical Board was marked as Ex.C1. The appellant has not proved that he suffered functional disability. Hence, he is not entitled to compensation by applying multiplier method. The Tribunal accepting the certificate issued by the Medical Board, awarded a sum of Rs.1,80,000/- (Rs.3,000/- x 60%) towards disability at the rate of Rs.3,000/- per percentage. This Court by judgment dated 09.01.2020 made in C.M.A.No.4870 of 2019 in the case of M/s.IFFCO TOKIO General Insurance Company Limited vs. Venkatesh and another, fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2018. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Therefore, the appellant is entitled to a sum of Rs.3,00,000/- towards disability (Rs.5,000/- x 60%) at the rate of Rs.5,000/- per percentage. The Tribunal has awarded a sum of Rs.15,000/- altogether towards extra nourishment & attendant charges which is meagre. Considering the nature of injuries and period of treatment taken by him, a sum of Rs.15,000/- granted altogether is enhanced to Rs.25,000/- towards extra nourishment and a sum of Rs.20,000/- is granted towards attendant charges. The amount awarded by the Tribunal towards damage to clothes is meagre and hence the same is hereby enhanced to Rs.3,000/-. The amounts awarded by the Tribunal under other heads are just and reasonable and hence the same 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 or reduced
1.	Disability	1,80,000	3,00,000	Enhanced
2.	Transportation charges	10,000	10,000	Confirmed

3.	Extra nourishment and attendant charges	15,000	25,000	Enhanced
4.	Pain and sufferings	48,000	48,000	Confirmed
5.	Social amenities	48,000	48,000	Confirmed
6.	Loss of income	25,500	78,000	Enhanced
7.	Damages to cloth	1,000	3,000	Enhanced
	Total	Rs.3,27,500/-	Rs.5,32,000/-	Enhanced by Rs.2,04,500/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,27,500/- is hereby enhanced to Rs.5,32,000/- 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 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. 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(CS VI)

//True Copy//

Sub Assistant Registrar

mtl

To

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

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

+1cc to Mr.T.Panchatsalam , Advocate SR.No. 10911

+1cc to Mr.N.Vijayaraghavan , Advocate SR.No. 11031

C.M.A.No.278 of 2020

A.SK(25/09/2020)