

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3144 of 2013

Raji @ Raju

... Appellant/Petitioner

Vs.

1.Sri Vengateswara Agencies
Kilakuttai, Kalangani post
Namakkal Taluk and District.
(R1 remained exparte before the Tribunal
and hence, notice to R1 is dispensed with)

2.M/s.The New India Assurance Co. Ltd.
29, Ram complex, Paramathi road
Namakkal. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.08.2011 made in M.C.O.P.No.350 of 2009 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Namakkal.

For Appellant : Mr.MA.P.Thangavel

For R2 : Mr.R.Neethi Perumal

R1 : Exparte

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The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 10.08.2011 made in M.C.O.P.No.350 of 2009 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Namakkal.

2.The appellant is claimant in M.C.O.P.No.350 of 2009 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Namakkal. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 28.06.2009.

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 Ashok Leyland lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said lorry to pay a sum of Rs.2,70,860/- 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 at the time of accident, the appellant was earning a sum of Rs.10,000/- per month by conducting drum set music party, also doing agricultural work & selling paddy powder. The appellant examined his colleague as P.W.3 to prove the same. The Tribunal without considering the same, fixed only a meagre sum of Rs.4,500/- as monthly income of the appellant. The appellant suffered fracture of right hand humerus, right femur and underwent surgery on his right leg. The appellant examined the doctor as P.W.2, who has assessed the disability of the appellant as 57.5% and marked the disability certificate as Ex.P11 to prove the injuries. The Tribunal awarded only a sum of Rs.1,15,000/- towards disability. The Tribunal ought to have adopted multiplier method to award compensation towards loss of earning capacity. The appellant has taken treatment as in-patient in the hospital for more than one month. The Tribunal has not awarded any compensation towards attendant charges. 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 was earning a sum of Rs.10,000/- per month. In the absence of any material evidence to prove the income of the appellant, the Tribunal fixed a sum of Rs.4,500/- as monthly income of the appellant and the same is not meagre. The Tribunal after considering all the materials available on record, awarded just compensation. 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 all the materials available on record.

8. It is the contention of the appellant that he suffered fracture of right hand humerus, right femur and underwent surgery on his right leg. The appellant examined the doctor as P.W.2, who has assessed the disability of the appellant as 57.5% and marked the disability certificate as Ex.P11 to prove the injuries. The Tribunal accepting the same, awarded a sum of Rs.1,15,000/- (Rs.2,000/- X 57.5%) towards disability at the rate of Rs.2,000/- per percentage of disability. The appellant has not proved that he suffered functional disability and there is loss of earning capacity. Therefore, the percentage method adopted and the amount awarded by the Tribunal towards disability is proper and the same does not warrant any interference by this Court.

8(i). The appellant contended that at the time of accident, he was earning a sum of Rs.10,000/- per month by conducting drum set music party and also doing agricultural work & selling paddy powder. The appellant examined his colleague as P.W.3 to prove the same. But the appellant has not produced any document to prove that he was earning a sum of Rs.10,000/- per month. In the absence of any material evidence to prove the income of the appellant, the Tribunal fixed a sum of Rs.4,500/- as monthly income of the appellant and awarded a sum of Rs.18,000/- (Rs.4,500/- X 4) towards loss of income for four months. The accident is of the year 2009. The monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.8,000/- is fixed as monthly income of the appellant. Due to the injuries, the appellant would not have attended his work at least for six months. Thus, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.48,000/- (Rs.8,000/- X 6).

8(ii). According to the appellant, he has taken treatment as in-patient in Surya hospital from 28.06.2009 to 13.07.2009 and he has taken treatment as out-patient in the same hospital from 14.08.2009 to 22.02.2010. The Tribunal has not awarded any compensation towards attendant charges, damage to clothes and loss of amenities. Considering the nature of injuries and period of treatment taken by the appellant, the sum of Rs.20,000/-, Rs.1,000/- and Rs.10,000/- are awarded towards attendant charges, damage to clothes and loss of amenities respectively. The sum of Rs.3,000/-, Rs.5,000/- and Rs.15,000/- awarded by the Tribunal towards transportation, extra nourishment and pain &

suffering are meagre and hence, the same are hereby enhanced to Rs.10,000/-, Rs.15,000/- and Rs.25,000/- respectively. The compensation awarded by the Tribunal towards medical expenses is just and reasonable and hence, the same is 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.	Transportation	3,000	10,000	Enhanced
2.	Extra nourishment	5,000	15,000	Enhanced
3.	Pain & suffering	15,000	25,000	Enhanced
4.	Medical expenses	1,14,860	1,14,860	Confirmed
5.	Disability	1,15,000	1,15,000	Confirmed
6.	Loss of income	18,000	48,000	Enhanced
7.	Attendant charges	-	20,000	Granted
8.	Damage to clothes	-	1,000	Granted
9.	Loss of amenities	-	10,000	Granted
	Total	2,70,860	3,58,860	Enhanced by Rs.88,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,70,860/- is hereby enhanced to Rs.3,58,860/- together with interest at the rate of 7.5% 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. 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. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.88,000/- enhanced by this Court as per the order of this Court dated 30.08.2013 in M.P.No.3 of 2013 in C.M.A.SR.No.71982 of 2012. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kj
To

The Motor Accident Claims Tribunal,
The Chief Judicial Magistrate,
Namakkal.

Copy to

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

+1cc to Ma.P.Thangavel, Advocate Sr.23921
+1cc to R.Neethiperumal, Advocate Sr.23478

C.M.A.No.3144 of 2013

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