



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3401 of 2013

Pasubathy @ Veeran

.. Appellant

Vs.

1.Maruthachalamoorthy

2.J.Revathi

3.The Oriental Insurance Co. Ltd.
Office at Post Box No.3821
Trichy road, Coimbatore-641 018.

4.The Divisional Manager
Divisional Office
The Oriental Insurance Co. Ltd.
Parimalam complex, EVN road
Erode Town Taluk.

.. Respondents

(The respondents 1, 2 and 4 are called absent,
set exparte before the Tribunal 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 30.07.2010 made in M.C.O.P.No.205 of 2008 on the file of Motor Accident Claims Tribunal, Sub Court, Bhavani.

For Appellant : Mr.M.Lokesh
for Mr.MA.P.Thangavel

For R3 : Mr.M.J.Vijayaraghavan
R1, R2 & R4 : Ex parte



J U D G M E N T

The matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 30.07.2010 made in M.C.O.P.No.205 of 2008 on the file of Motor Accident Claims Tribunal, Sub Court, Bhavani.

2.The appellant is claimant in M.C.O.P.No.205 of 2008 on the file of Motor Accident Claims Tribunal, Sub Court, Bhavani. He filed the said claim petition claiming a sum of Rs.2,50,000/- as compensation for the injuries sustained by him in the accident that took place on 20.04.2008.

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, the driver of the Ambassador car belonging to the 2nd respondent and directed both the 2nd respondent as well as the 3rd respondent/Insurance Company being insurer of the said car to jointly and severally pay a sum of Rs.1,07,000/- as compensation to the appellant and dismissed the claim petition against the 4th respondent.

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 multiple grievous injuries and underwent surgeries. The appellant has taken treatment as in-patient in the hospital on three spells from 20.04.2008 to 02.05.2008, one day on 05.05.2008, another one day on 21.05.2008 and has taken treatment as out-patient till filing of the appeal. P.W.2/Doctor examined the appellant and assessed the disability suffered by him as 30%, which itself is very low. The Tribunal reduced the same to 15% and awarded a sum of Rs.40,000/- towards disability. The appellant was working as an agricultural coolie and he is not able to do the work as he was doing earlier. The Tribunal ought to have adopted multiplier method and awarded more compensation. The Tribunal erred in granting a sum of Rs.32,000/- out of total expenses of Rs.97,000/- without considering the evidence of P.W.2 and P.W.3/Doctors and Exs.P8 to P15 especially Ex.P10/medical bills. 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 3rd respondent/Insurance Company contended that the appellant has not proved that he suffered functional disability and lost his earning capacity. Hence, he is not entitled to compensation by



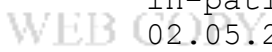
adopting multiplier method. The Tribunal considering the evidence and documents, reduced the percentage of disability and awarded excessive compensation of Rs.40,000/- for 15% disability. The total compensation awarded by the Tribunal is not meagre. The appellant has not made out any case for enhancement 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 3rd respondent/Insurance Company and perused the entire materials on record.

8. From the materials available on record, it is seen that the appellant has stated that in the accident, he suffered multiple grievous injuries and he took treatment in K.M.C. Hospital, Erode. He examined P.W.2/Doctor who deposed about the nature of injuries and certified that the appellant suffered 30% disability. The Tribunal reduced the same to 15% on the ground that P.W.2/Doctor examined the appellant after two years of the accident and there will be change of percentage of disability in future. The said reason is erroneous. The appellant is entitled to compensation for 30% disability at the rate of Rs.2,000/- per percentage of disability. But the appellant has not produced any document to prove that he suffered functional disability and lost his earning capacity. Therefore, the appellant is not entitled to compensation by adopting multiplier method while awarding compensation towards disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.60,000/- (Rs.2,000/- X 30%).

8(i) The appellant produced Exs.P8/summary bill, P10 and P13/medical bills to show that he incurred total expenses of Rs.97,000/- for his treatment. The Tribunal did not accept Exs.P8, P10 and P13 on the ground that the author of the documents were not examined and awarded only a sum of Rs.32,000/- towards medical expenses. It is seen that the respondents have not disputed and objected the documents filed by the appellant under Exs.P8, P10 and P13. Hence, the appellant is entitled to a sum of Rs.97,000/- towards medical expenses as per Exs.P8, P10 and P13.

8(ii) The appellant claimed that he was an agricultural coolie and was earning a sum of Rs.4,000/- per month. The Tribunal awarded a sum of Rs.8,000/- (Rs.4,000/- X 2) towards loss of income for a period of two months. Due to the injuries and disability, the appellant would not have worked atleast for a period of five months. Hence, a sum of Rs.20,000/- (Rs.4,000/- X 5) is awarded towards loss of income. The Tribunal has awarded Rs.2,000/- and Rs.5,000/- towards transportation and extra



8(iii) The appellant has contended that he took treatment as in-patient in K.M.C.Hospital, Erode, from 20.04.2008 to 02.05.2008. The Tribunal has not awarded any amount towards attendant charges, loss of amenities and damage to clothes. Considering the nature of injuries and period of treatment taken by the appellant, Rs.10,000/-, Rs.10,000/- and Rs.1,000/- are awarded towards attendant charges, loss of amenities and damage to clothes respectively. The compensation awarded by the Tribunal towards pain and suffering is just and reasonable and hence, the same is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,07,000/- is hereby enhanced to Rs.2,33,000/- 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 and the 3rd respondent/Insurance Company are jointly and severally 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. This appeal is dismissed against the 4th respondent. No costs.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge
Motor Accident Claims Tribunal
Bhavani Taluk, Erode District.

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

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.33426

C.M.A.No.3401 of 2013

SS(CO)
CB(15/07/2021)