

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2379 of 2016

G.Janavel

.. Appellant/Petitioner

Vs.

1.J.Venkatachalapathy

2.The ICICI Lombard General Insurance Company Limited,
No.140, Nungambakkam High Road, III-Floor,
Chottabai Center,
Chennai - 600 034.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.11.2011 made in M.C.O.P.No.69 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Thiruttani.

For Appellant : Mr.K.R.Ponnusamy
for M/s.Anand and Suryas

For R2 : Mrs.R.Sreevidhya

R1 : Exparte

सत्यमेव जयते
J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 30.11.2011 made in M.C.O.P.No.69 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Thiruttani.

2.The appellant is the claimant in M.C.O.P.No.69 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Thiruttani. He filed the above 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 17.11.2007.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the paddy harvesting vehicle belonging to the first respondent and directed the respondents 1 and 2, being the owner and insurer of the paddy harvesting vehicle jointly and severally to pay a sum of Rs.2,53,900/- as compensation to the appellant/claimant.

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.Pending numbering of this appeal, the claimant filed C.M.P.No.6425 of 2016 in C.M.A.SR.No.89508 of 2013 to amend the claim amount from Rs.7,00,000/- to Rs.10,00,000/- and consequently enhance the value of the appeal from Rs.4,46,100/- to Rs.7,46,100/- and the same was ordered by this Court on 10.08.2016.

6.The learned counsel appearing for the appellant contended that the appellant was working as coolie and was earning a sum of Rs.150/- per day. The Tribunal erred in fixing meagre sum of Rs.3,000/- per month as notional income of the appellant and the Tribunal has not granted any amount towards future prospects. The Tribunal ought to have fixed the monthly income of the appellant at Rs.4,500/-. In the accident, the appellant has sustained skull fracture, fracture of mandible, loss of three teeth and loss of eye vision as the right eye was removed and suffered 100% disability. The Tribunal awarded only a meagre sum of Rs.1,80,000/- for 90% disability by adopting percentage method. The appellant lost his entire earning capacity and he could not continue his work as he was doing earlier. The Tribunal ought to have awarded compensation by adopting multiplier method for 100% disability. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7.Per contra, Mrs.R.Sreevidhya, learned counsel appearing for the second respondent-Insurance Company contended that P.W.2/Doctor who has certified the percentage of disability of the appellant is not the Doctor who treated the appellant and percentage of disability certified by P.W.2/Doctor is excessive. P.W.2/Doctor is not an eye or ortho specialist. The Tribunal erred in awarding compensation for 90% disability, when the Doctor from the hospital, where the appellant took treatment was not examined. The amounts awarded by the Tribunal towards disability is not meagre. The appellant contended that he was a coolie and was earning a sum of Rs.150/- per day. Except oral evidence, he has not produced any material evidence to prove the same. In the absence of any material evidence with regard to

avocation and income, a sum of Rs.3,000/- per month fixed by the Tribunal as notional income of the appellant is not meagre. The amounts awarded by the Tribunal under other heads are not meagre. The appellant has not made out any case for enhancement and prayed for dismissal of the appeal.

8. Heard the learned counsel appearing for the appellant as well as the second respondent and perused the entire materials on record.

9. From the materials available on record, it is seen that the appellant suffered skull injury and his right eye was removed. In addition to that he suffered cut injuries in the index, mid, ring and little fingers and also primary skin suturing was done in his face. Due to the skull injury and removal of his right eye, the appellant is not able to do the coolie work, which he was doing earlier. P.W.2/Doctor has certified the percentage of disability for different parts of the body totaling 100% disability. The Tribunal without assigning any reason, applied percentage method and awarded compensation for 90% disability. The Tribunal failed to take note of the evidence of appellant, P.W.2/Doctor, nature of injuries and that appellant is totally disabled and could not do the work as he was doing earlier. Based on the materials on record, I hold that appellant is entitled to compensation for disability by applying multiplier method. P.W.2/Doctor has certified that appellant suffered totaling 100% disability for different parts of the body. Considering the nature of injuries, the appellant is entitled to compensation by adopting multiplier method for 60% disability.

10. The appellant contended that he was working as coolie and was earning a sum of Rs.150/- per day. He failed to prove the said contention. He would not have worked for all the days in a month. The accident occurred in the year 2007 and the monthly income fixed by the Tribunal at Rs.3,000/- is meagre. Therefore, a sum of Rs.4,000/- per month is fixed as notional income of the appellant. The appellant was aged 45 years at the time of accident and the Tribunal not granted any amount towards future prospects. The appellant is entitled to 25% enhancement towards future prospects. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.5,04,000/- {Rs.5,000/- [Rs.4,000/- + Rs.1,000/- (25% of Rs.4,000/-) X 12 X 14 X 60/100]}.

11. From the award passed by the Tribunal, it is seen that the appellant has taken treatment in the hospital as in-patient from 17.11.2007 to 26.11.2007 but the Tribunal has not awarded any amount towards attendant charges. Therefore, a sum of Rs.15,000/- is granted by this Court towards attendant charges. The Tribunal has not awarded any amount for loss of amenities and damage to cloth. Therefore, a sum of Rs.50,000/- and Rs.2,000/-

respectively are granted towards loss of amenities and damage to cloth. The Tribunal has granted a meagre sum of Rs.5,000/- towards extra nourishment. Considering the nature of injuries, the same is enhanced to Rs.20,000/-. The Tribunal has granted a meagre sum of Rs.18,000/- towards loss of income for six months and the same is enhanced to Rs.24,000/- (Rs.4,000/- X 6 months). The amounts awarded by the Tribunal towards pain and sufferings, transportation and medical expenses are just and reasonable and hence they are 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.	Disability	1,80,000/-	5,04,000/-	Enhanced
2.	Pain and sufferings	40,000/-	40,000/-	Confirmed
3.	Extra nourishment	5,000/-	20,000/-	Enhanced
4.	Transportation	5,000/-	5,000/-	Confirmed
5.	Medical expenses	5,900/-	5,900/-	Confirmed
6.	Loss of income	18,000/-	24,000/-	Enhanced
7.	Loss of amenities	-	50,000/-	Granted
8.	Attendant charges	-	15,000/-	Granted
9.	Damage to cloth	-	2,000/-	Granted
	Total	Rs.2,53,900/-	Rs.6,65,900/-	enhanced by Rs.4,12,000/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,53,900/- is hereby enhanced to Rs.6,65,900/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 and 2 are jointly or 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, to the credit of M.C.O.P.No.69 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Thiruttani. 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. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Thiruttani.

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

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 1647

C.M.A.No.2379 of 2016

AK (CO)
GN(15/12/2020)



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