

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.620 of 2013

E. Saravanakumar

.. Appellant/Petitioner

Vs.

1.C. Valliame

2.Shriram General Insurance Co. Ltd.,

II Floor, City Centre Complex,

66, Thirumalai Pillai Road,

Near Vani Mahal, T.Nagar,

Chennai 600 017.

.. Respondents/Respondents

(R1 is unnecessary party and hence, given up)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 20.11.2012, made in M.C.O.P. No.1774 of 2011, on the file of the Principal District Court, (Motor Accident Claims Tribunal) Cuddalore.

For Appellant : Mrs. Ramya V. Rao

For Respondents: Mr. K. Poomalai (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of the compensation granted by the Tribunal in award dated 20.11.2012, made in M.C.O.P. No.1774 of 2011, on the file of the Principal District Court, (Motor Accident Claims Tribunal) Cuddalore.

2.The appellant-claimant filed M.C.O.P. No.1774 of 2011, on the file of the Principal District Court, (Motor Accident Claims Tribunal) Cuddalore, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 21.05.2011.

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 Tipper Lorry belonging to the 1st respondent and directed the 2nd respondent who is the insurer of the offending vehicle to pay a sum of Rs.5,84,860/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 20.11.2012, made in M.C.O.P. No.1774 of 2011, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended the appellant was a final year B. Pharmacy student and after completing his studies, he would have got decent job with good salary. The Tribunal has fixed only a meagre sum of Rs.3,000/- per month as notional income for a B.Pharmacy student. Even an illiterate person will earn more than Rs.4,500/- per month. Due to the injuries, his entire leg has been amputated. The appellant proved the nature of injuries and disability suffered by examining himself as P.W.2 and examining Doctor as P.W.3. The Tribunal failed to consider the evidence of appellant and Doctor and Exs.P18, P19 and P25. The appellant has taken various treatments. The respondents did not let in any oral and documentary evidence to disprove the evidence of the appellant. The Tribunal failed to consider the discomfort faced by the appellant in his day-to-day life and awarded meagre amount towards pain and suffering, extra nourishment and transportation. The appellant has taken treatment as in-patient for more than 105 days. The Tribunal failed to grant any amount towards attendant charges and future medical expenses and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant who is a student and a non-earning member. The monthly income fixed by the Tribunal is not meagre. The percentage of disability certified by P.W.3 - Doctor is excessive. The Tribunal accepted the same and granted compensation by adopting multiplier method. In view of the same, the appellant is not entitled for any enhancement in the present appeal and prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

8.It is the contention of the appellant that at the time of accident, he was a final year B. Pharmacy student and due to the

injuries sustained in the accident, he took treatment as in-patient at Jipmer Hospital from 22.05.2011 to 03.09.2011, for a period of 105 days, underwent 4 surgeries on 22.05.2011, 27.05.2011, 17.06.2011 and 08.07.2011 and his left leg was amputated. P.W.3 - Doctor examined the appellant and certified that the appellant suffered 90% disability. The Commissioner for Differently Abled, certified that the appellant suffered 85% disability. The Tribunal accepting the certificate given by the said Commissioner, fixed the disability at 85% and considering the age, nature of injuries, disability and amputation, applied multiplier method and awarded compensation towards disability. The Tribunal considering the fact that the appellant was a student, fixed the monthly income at Rs.3,000/-. The accident is of the year 2011. The notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.6,000/- per month is fixed as notional income of the appellant. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.11,01,600/- [Rs.6,000/- x 12 x 18 x 85%]. The appellant has taken treatment as inpatient in Hospital for 105 days. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the age, nature of injuries, disability, amputation and period of treatment taken, the appellant is entitled to a sum of Rs.35,000/- towards attendant charges and Rs.25,000/- towards loss of amenities. The amounts awarded by the Tribunal towards pain and suffering and extra nourishment & transportation together are meagre. Hence, the same are enhanced to Rs.25,000/- each. The Tribunal has not awarded any amount towards damages to clothes. Hence, a sum of Rs.1,000/- is awarded under the said head. The amounts awarded by the Tribunal under the head medical expenses is just and reasonable and hence, the same is hereby confirmed. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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	5,50,800/-	11,01,600/-	Enhanced
2.	Pain and suffering	10,000/-	25,000/-	Enhanced

3.	Extra nourishment and transportation	5,000/-	25,000/-	Enhanced
4.	Damages to clothes	-	1,000/-	Granted
5.	Medical expenses	19,060/-	19,060/-	Confirmed
6.	Attendant charges	-	35,000/-	Granted
7.	Loss of amenities	-	25,000/-	Granted
	Total	5,84,860/-	12,31,660/-	Enhanced by Rs.6,46,800/-

9. In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.5,84,860/- is enhanced to Rs.12,31,660/- 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, 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.1774 of 2012. On such deposit, the appellant is permitted to withdraw the enhanced award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.6,46,800/-. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Principal District Judge,
(Motor Accident Claims Tribunal),
Cuddalore.

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

+1 CC to Mr.K. Poomalai, Advocate sr 35532.

C.M.A.No.620 of 2013

SAI (CO)
SP(01/12/2020)



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