

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.735 of 2013

Suresh Mani

.. Appellant /Petitioner

Vs.

1.Elumalai

2.The Divisional Manager,
The United India Insurance Co. Limited,
No.95, Big Street,
Thiruvannamalai.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 25.10.2010 and made in M.A.C.T.O.P.No.748 of 2004 on the file of the Motor Accident Claims Tribunal and Chief Judicial Magistrate, Thiruvannamalai.

For Appellant : F. Terry Chellaraja
For R2 : Mr. M.J.Vijayaraaghavan

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 25.10.2010 made in M.A.C.T.O.P.No.748 of 2004 on the file of the Motor Accident Claims Tribunal and Chief Judicial Magistrate, Thiruvannamalai.

2.The appellant is claimant in M.C.O.P.No.748 of 2004 on the file of Motor Accident Claims Tribunal and Chief Judicial Magistrate Tiruvannamalai. He filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 11.04.2004.

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 lorry and directed the 2nd respondent/Insurance Company being insurer of the said lorry to pay a sum of Rs.1,60,000/- 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 the appellant has taken treatment in Kilpauk Government General Hospital, Chennai for 46 days but the Tribunal has awarded only a consolidated amount of Rs.50,000/- for Attendant charges, Extra nourishment and future medical expenses. The same is meager. The appellant suffered crush injuries in the left foot and the left was deformed, there was a loss of distal $\frac{1}{2}$ of all toes and plastic surgery was also done. The Tribunal without considering the same awarded only a sum of Rs.15,000/- for pain and sufferings. Further, the amounts awarded by the Tribunal under other heads are also very 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 proved his avocation and income. The injuries sustained by the appellant are simple injuries. The Tribunal without considering the nature of injuries awarded excessive amounts. The total compensation awarded by the Tribunal is also excessive. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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

8. It is the contention of the appellant that he was aged 28 years at the time of accident and was earning a sum of Rs.5,000/- per month by working as ward assistant. To substantiate the said contention, he produced Exs.P15 and Ex.P16. According to the appellant he sustained crush injuries and examined himself as P.W.1 and Doctor Ravindran as P.W.2 and marked Exs.P3, P4, P5, P6, P9, P10 and P.11. The Tribunal has awarded consolidated sum of Rs.50,000/- towards Attendant charges, Medical fees for the P.W.2/Doctor, Medical expenses, Future medical expenses and Extra nourishment. The appellant has taken treatment as inpatient in Government Hospital, Thiruvannamalai on 11.04.2004 and from 20.04.2004 to 05.06.2004 in Kilpauk Medical College, Chennai. Considering the period of treatment, the consolidated sum of Rs.50,000 granted by the Tribunal is enhanced to Rs.75,000/-. Considering the nature of injuries sustained by the appellant amounts granted by the Tribunal for pain and sufferings is enhanced to Rs.25,000/-. The Tribunal has not awarded any amount towards loss of amenities and damage to clothes. Hence Rs.25,000/- and Rs.500/- are awarded

for loss of amenities and damages to clothes respectively. Considering the avocation of the injured, the Tribunal awarded a sum of Rs.55,000/- towards loss of income and loss of future income, which is reasonable and hence the same is 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.	Extra Nourishment, Attendant charges, future medical expenses	50,000/-	75,000/-	Enhanced
2.	Pain and sufferings	15,000/-	25,000/-	Enhanced
3.	Disability	40,000/-	40,000/-	Confirmed
4.	Loss of income and loss of future income	55,000/-	55,000/-	Confirmed
5.	Loss of amenities	-Nil-	25,000/-	Granted
6.	Damage to clothes	-Nil	1,000/-	Granted
	Total	Rs.1,60,000/-	Rs.2,21,000/-	Enhanced

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,60,000/- is hereby enhanced to Rs.2,21,000/- 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 eight 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 (CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal
and Chief Judicial Magistrate, Thiruvannamalai.

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

+lcc to Mr.F.Terry Chella Raja, Advocate, S.R.No. 22289
+lcc to Mr.J.Vijayaraghavan, Advocate, S.R.No. 22265

C.M.A.No.735 of 2013

AD(CO)
GN(19/04/2021)