

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.832 of 2013

K.Subramani

.. Appellant/Petitioner

Vs.

1.K.Kalaimathi

2.The Branch Manager

United India Insurance Company Ltd.

Branch office at No.180-A

Attur main road

Rasipuram, represented by

Divisional Officer, No.2

Dr.Shankaran road, Namakkal.

.. Respondents/Respondents

(R1 was set exparte before the Tribunal and hence
notice to R1 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 30.03.2009 made in M.C.O.P.No.795 of 2008 on the
file of Motor Accident Claims Tribunal, Sub Court, Rasipuram.

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

For R2 : Mr.M.B.Raghavan
for M/s.M.B.Gopalan

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
30.03.2009 made in M.C.O.P.No.795 of 2008 on the file of Motor
Accident Claims Tribunal, Sub Court, Rasipuram.

2.The appellant is claimant in M.C.O.P.No.795 of 2008 on the file of Motor Accident Claims Tribunal, Sub Court, Rasipuram. 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 09.04.2002.

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 bus belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said bus to pay a sum of Rs.1,31,000/- 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 was working as a Black smith and was earning a sum of Rs.9,000/-per month. In the accident, the appellant suffered fracture in both hands, underwent surgery, plates and screws were implanted. Due to the injuries, he could not continue his work as a black smith and he lost his earning capacity. The Tribunal ought to have adopted multiplier method for awarding compensation. The appellant has taken treatment in Surya Hospital, Rasipuram, as in-patient from 09.04.2002 to 09.05.2002. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. The appellant produced Ex.P6/Medical bills for a sum of Rs.69,359.49. The Tribunal erroneously reduced the same and granted only a sum of Rs.64,000/- towards medical expenses. The amounts awarded by the Tribunal under other 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 proved that he suffered functional disability. Hence, the Tribunal rightly granted compensation by adopting percentage method. Considering the nature of injuries, the Tribunal reduced the percentage of disability and granted 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 the entire materials on record.

8.It is the contention of the appellant that he was working as a black smith before the accident and was earning a sum of

Rs.9,000/- per month. The appellant has not produced any material to prove his income. In the absence of any material evidence with regard to income, the Tribunal fixed a sum of Rs.3,000/- per month as notional income of the appellant. The accident is of the year 2002. The notional income fixed by the Tribunal is not meagre. According to the appellant, in the accident, he suffered fracture in both hands. The appellant examined himself as P.W.1 and examined the Doctor who treated him as P.W.2 to prove the nature of injuries. P.W.2/Doctor deposed about the nature of injuries, the disability suffered and the treatment taken by the appellant. From the materials on record, it is seen that the appellant has suffered grievous injuries and fracture in both hands. The respondents did not let in any contra evidence to disprove that the appellant was not working as a black smith before the accident. For working as black smith, the hands are important and absolutely necessary. P.W.2/Doctor has deposed that both the fingers and wrist are severely affected and the appellant cannot hold things and lift things. The Tribunal has also held that the appellant suffered grievous injuries in his wrists. P.W.2/Doctor assessed 45% disability for both hands. The Tribunal reduced the disability to 35% and awarded a sum of Rs.35,000/- towards disability by adopting percentage method. Considering the nature of injuries, avocation and disability suffered by the appellant, this is a fit case to award compensation by adopting multiplier method and it would be just and proper to fix the functional disability at 25%. The appellant was aged 47 years at the time of accident. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the multiplier applicable is 13. Thus, a sum of Rs.1,17,000/- ($\text{Rs.3,000/-} \times 12 \times 13 \times 25/100$) is awarded towards disability and loss of earning power.

8(i). According to the appellant, he has taken treatment as in-patient in Surya Hospital, Rasipuram, from 09.04.2002 to 09.05.2002 for 31 days. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the nature of injuries, disability and period of treatment taken by the appellant, Rs.10,000/- each are awarded towards attendant charges and loss of amenities. A sum of Rs.5,000/- awarded by the Tribunal towards transportation and extra nourishment is meagre and hence, the same is hereby enhanced to Rs.10,000/-. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are 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.	Disability and loss of earning power	35,000	1,17,000	Enhanced
2.	Medical expenses	64,000	64,000	Confirmed
3.	Loss of income during treatment period	12,000	12,000	Confirmed
4.	Pain and suffering	15,000	15,000	Confirmed
5.	Transportation and Extra nourishment	5,000	10,000	Enhanced
6.	Attendant charges	-	10,000	Granted
7.	Loss of amenities	-	10,000	Granted
	Total	1,31,000	2,38,000	Enhanced by Rs.1,07,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,31,000/- is hereby enhanced to Rs.2,38,000/- 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 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. No costs.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

kj

To

1. The Subordinate Judge
Motor Accident Claims Tribunal
Rasipuram.

Copy to:

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

+1 cc to Mr.Ma.P.Thangavel Advocate sr36664

C.M.A.No.832 of 2013

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