



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.603 of 2020

S.Nallathambi

..Appellant/Claimant

Vs.

1.T.Susila

2.United India Insurance Company Ltd.,
No.2, Dr Sankaran Road,
Namakkal Town and Taluk.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.03.2019 made in M.C.O.P.No.114 of 2015 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Namakkal.

For Appellant : Mr.R.Nalliyappan

For Respondents : Ms.I.Malar for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 29.03.2019 made in M.C.O.P.No.114 of 2015 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Namakkal.

2.By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3.The appellant is the claimant in M.C.O.P.No.114 of 2015 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Namakkal. He filed the above said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 20.12.2014.



4.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 car belonging to the first respondent, insured with the second respondent and directed the respondents to jointly and severally pay a sum of Rs.14,55,206/- as compensation to the appellant.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellant contended that the appellant was working as Sales Officer in Airtel Company and was earning a sum of Rs.10,000/- per month at the time of the accident. The Tribunal fixed only a meagre sum of Rs.5,000/- per month as notional income of the appellant. Due to the accident, the appellant sustained multiple fractures and injuries all over the body. He examined P.W.2-Doctor to prove the same. P.W.2-Doctor assessed disability of the appellant as 59% and issued disability certificate which is marked as Ex.P11. Due to injury, the appellant could not do his work as he was doing earlier. The Tribunal considering the nature of injuries, ought to have adopted multiplier method in granting compensation. The Tribunal has not awarded any amount towards attendant charges and damages to cloth. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7.Per contra, Ms.I.Malar, learned counsel appearing for the second respondent-Insurance Company contended that except oral evidence, the appellant has not produced any documents to prove his income. In the absence of any documents with regard to avocation and income, the Tribunal rightly fixed a sum of Rs.6,000/- per month as notional income of the appellant. The appellant has not proved that due to injuries he suffered functional disability, he lost earning capacity and he could not do the work as he was doing earlier. In the absence of any documentary evidence to prove that the appellant suffered functional disability, the percentage method applied by the Tribunal is proper. The amounts awarded by the Tribunal under other heads are not meagre and prayed for dismissal of the appeal.

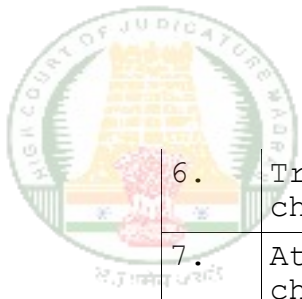
8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent/ Insurance Company and perused the entire materials on record.

9.It is the contention of the appellant that due to the accident, he sustained multiple fractures and injuries all over the body. P.W.2-Doctor assessed the percentage of disability as



59%. The Tribunal awarded a sum of Rs.1,77,000/- towards disability at the rate of Rs.3,000/- per percentage and the same is proper. The appellant has not proved that he suffered functional disability and there is loss of earning capacity. Therefore, the percentage method adopted by the Tribunal is proper. According to the appellant, he was aged 30 years at the time of accident and was working as Sales Officer in Airtel Company and was earning a sum of Rs.10,000/- per month. The appellant has not let in any evidence to substantiate the said contention. In the absence of any evidence with regard to avocation and income of the appellant, the Tribunal fixed a sum of Rs.6,000/- as monthly income of the appellant and the same is meagre. The accident is of the year 2014. A sum of Rs.9,000/- per month is fixed as notional of the appellant. Due to the injuries sustained in the accident, the appellant would not have worked atleast for 28 months. The appellant is entitled to a sum of Rs.2,52,000/- (Rs.9,000/- x 28 months) towards loss of earnings for a period of 28 months. The appellant has taken treatment as in-patient from 21.12.2014 to 07.02.2015 in two private hospitals and again from 07.02.2015 to 10.03.2015 in Physio Therapy Hospital. The Tribunal has not granted any amount towards attendant charges and loss of damage to clothes. A sum of Rs.25,000/- and Rs.2,000/- are granted towards attendant charges and loss of damage to clothes respectively. The amounts awarded by the Tribunal under the heads pain and suffering and extra nourishment are meagre. The same are enhanced to Rs.40,000/- and Rs.25,000/- respectively. The amounts awarded by the Tribunal under 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
1.	Permanent disability	1,77,000/-	1,77,000/-	Confirmed
2.	Loss of earnings	1,68,000/-	2,52,000/-	Enhanced
3.	Medical expenses	10,57,706/-	10,57,706/-	Confirmed
4.	Pain & sufferings	20,000/-	40,000/-	Enhanced
5.	Extra nourishment	10,000/-	25,000/-	Enhanced



6.	Transport charges	22,500/-	22,500/-	Confirmed
7.	Attendant charges	-	25,000/-	Granted
8.	Loss of damage to clothes	-	2,000/-	Granted
	Total	14,55,206/-	16,01,206/-	Enhanced by Rs.1,46,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,55,206/- is hereby enhanced to Rs.16,01,206/- 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 the Court fee, if any on the enhanced amount of compensation. The respondents 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 by making necessary applications before the Tribunal. No costs.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

vkr
To

1. The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Namakkal.

+1 CC to Mr. R. Nalliyappan, Advocate sr 14847
+1 CC to Mrs. I. Malar, Advocate sr 14829.

C.M.A.No.603 of 2020

VBA (CO)
SP(17/08/2021)