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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2780 of 2016

Saravanan ... Appellant /Petitioner

Vs.

1.Murali

2.V.Ashok Kumar

3.Reliance General Insurance Company Ltd.,
No.23, Spur Tank Road,
Chennai-39. ... Respondents/Respondents
(Respondents 1 & 2 Remained absent
and set ex-parte by the Lower Court
and hence notice to R1 & R2 is not necessary)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.06.2012 made in M.C.O.P.No.98 of 2010 on the file of the Motor Accident Claims Tribunal, District Court, Karaikal.

For Appellant : Mr.T.Susindran

For R1 and R2 : Ex-parte

For R3 : Mr.S.Arun Kumar

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 26.06.2012 made in M.C.O.P.No.98 of 2010 on the file of the Motor Accident Claims Tribunal, District Court, Karaikal.

2.The appellant is claimant in M.C.O.P.No.98 of 2010 on the file of the Motor Accident Claims Tribunal, District Court, Karaikal. He filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.02.2010. 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/first respondent herein, belonging to the second respondent and directed the third respondent/Insurance Company, being insurer of the said lorry, to pay a sum of Rs.91,370/- as compensation to the appellant/claimant.

3. Not being satisfied with the amount awarded by the Tribunal, the appellant/claimant has come out with the present appeal seeking enhancement of compensation.

4. The learned counsel appearing for the appellant/claimant contended that the appellant sustained fracture injury on his leg and bleeding injuries all over his body and he was taking continuous treatment for fractures. The appellant was working as a driver of Septic Tank cleaning vehicle and was earning a sum of Rs.10,000/- per month. The Tribunal fixed a meagre sum of Rs.2,500/- per month as notional income of the appellant/claimant and granted meagre sum towards loss of income. Due to the injuries sustained in the accident, the appellant/claimant has taken first aid treatment in Government General Hospital, Karaikal and after that he was referred to Karaikal Medical Centre and Vinayaka Medical Missions, Karaikal. The Tribunal has not awarded any amounts towards attendant charges, loss of amenities and loss of clothes. The appellant examined PW3/Doctor, who has treated the appellant and certified the disability of the appellant at 48% to prove the nature of injuries sustained by him. The Tribunal without assigning any reason reduced the percentage of disability from 48% to 30% and granted lesser amount towards disability. In any event, the compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation.

5. Per contra, Mr.S.Arun Kumar, learned counsel appearing for the third respondent-Insurance Company contended that the accident occurred in the year 2010. Considering the entire materials on record, the Tribunal reduced the percentage of disability and awarded compensation for disability which is not meagre. The amounts awarded by the Tribunal under different heads are excessive and prayed for dismissal of the appeal.

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

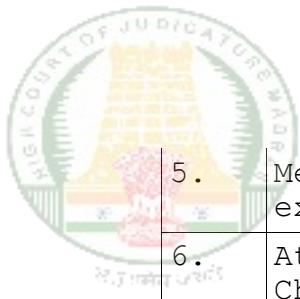
7. From the materials available on record, it is seen that the appellant has contended that he was working as a driver of Septic Tank cleaning vehicle and was earning a sum of Rs.10,000/- per month. In the accident, the appellant has suffered grievous injuries, he has taken first aid in the



Government General Hospital, Karaikal. Thereafter, he continued his treatment in Karaikal Medical Centre and Vinayaka Medical Missions, Karaikal. He underwent surgery and metal plate was fixed in his leg. PW3/Doctor has assessed disability of the appellant at 48%. The Tribunal without assigning any reason has reduced the same to 30% which is not proper. The appellant is entitled to compensation for 48% disability. By awarding a sum of Rs.3,000/- per percentage of disability, the amount awarded by the Tribunal towards disability is enhanced to Rs.1,44,000/- (48 X Rs.3,000/-). Though the appellant has examined P.W.2-owner of the septic tank cleaner vehicle to prove the income, the Tribunal has fixed monthly income of the appellant at Rs.2,500/-. The accident is of the year 2010 and the monthly income fixed by the Tribunal is meagre. A sum of Rs.8,000/- per month is fixed as notional income of the appellant. Due to the injuries, the appellant would not have attended his work atleast for a period of five months. Hence, he is entitled to compensation towards loss of income for five months. Thus, the amount awarded by the Tribunal towards loss of income is enhanced to Rs.40,000/- (Rs.8,000/- x 5).

8.The appellant has contended that he underwent surgery, metal plate was implanted in his leg. The appellant would have incurred some expenses towards attendant charges. The Tribunal has not awarded any amount towards attendant charges and hence a sum of Rs.30,000/- is awarded towards attendant charges. The Tribunal has not awarded any amount towards loss of amenities and loss of clothes. Considering the fact that the appellant has sustained fracture injury and underwent surgery, a sum of Rs.25,000/- is awarded towards loss of amenities. A sum of Rs.2,000/- is granted for loss of clothes. The amounts granted 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.	Loss of income	5,000	40,000	Enhanced
2.	Pain and suffering	25,000	25,000	Confirmed
3.	Extra nourishment	5,000	5,000	Confirmed
4.	Permanent disability	30,000	1,44,000	Enhanced



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5.	Medical expenses	26,370	26,370	Confirmed
6.	Attendant Charges	-	30,000	Granted
7.	Loss of amenities	-	25,000	Granted
8.	Loss of clothes	-	2,000	Granted
	Total	Rs.91,370/-	Rs.2,97,370/-	Enhanced by Rs.2,06,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.91,370/- is hereby enhanced to Rs.2,97,370/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The third respondent/Insurance Company is directed to deposit the 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/claimant 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

//True Copy//

Sub Assistant Registrar

gbi

To

1. The District Judge,
Motor Accident Claims Tribunal,
Karaikal.



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

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+1cc to Mr.T.Susindran, Advocate Sr.326
+1cc to Mr.S.Arun Kumar, Advocate Sr.684

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