

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.826 of 2016

Baskar

.. Appellant/Petitioner

Vs.

1.A.V.Arul

M/s.Arul & CO Transport

2.Reliance General Insurance Company Limited,

Lakshmi Complex 1st Floor,

Bharathi Street, Omaluur Main Road,

Swarnapuri,

Salem - 636 004.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.11.2015 made in M.C.O.P.No.182 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Namakkal.

For Appellant : Mr.C.Thangaraju

For R2 : Mr.S.ArunKumar

For R1 : Given Up Vide Batta

SR.28773 dated 11.4.2016

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 05.11.2015 made in M.C.O.P.No.182 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Namakkal.

2.The appellant is the claimant in M.C.O.P.No.182 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Namakkal. He filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.02.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the lorry belonging

to the first respondent and directed the second respondent-Insurance Company, being the insurer of the lorry to pay a sum of Rs.4,96,094/- 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 due to the injuries sustained by the appellant, he is permanently disabled and he is unable to lead a normal life. The appellant suffered 50% disability. The appellant was working as heavy vehicle driver and after the accident, he became unfit to continue his work as heavy vehicle driver. The Tribunal ought to have considered his loss of earning capacity as 100% and applied multiplier method for granting compensation. The appellant was earning a sum of Rs.10,000/- per month and the Tribunal erred in fixing meagre sum of Rs.6,000/- per month as notional income of the appellant. The Tribunal ought to have fixed the monthly income of the appellant at Rs.12,000/- as per the judgment of the Hon'ble Apex Court reported in 2015 (3) SCC 590, [Neeta and Others Vs. Divisional Manager, Maharashtra State Road Transport Corporation, Kolhapur]. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, Mr.S.ArunKumar, learned counsel appearing for the second respondent-Insurance Company contended that the appellant was possessing heavy vehicle driving license and subsequently he obtained another license in the year 2013, by suppressing the possession of earlier driving license before the R.T.O., for the purpose of seeking enhancement of compensation by applying multiplier method. The date of birth mentioned in the both the driving licenses are different. It is not correct to say that the appellant is unable to do his work of heavy vehicle driver as he was doing earlier. In the absence of any evidence with regard to income, a sum of Rs.6,000/- per month fixed by the Tribunal as notional income of the appellant is proper. The amounts awarded by the Tribunal under different heads are not meagre. The appellant is not entitled for any enhancement and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the second respondent and perused the entire materials on record.

8. From the materials available on record, it is seen that the appellant suffered fracture on his right hand and he was admitted in Ganga Hospital, Coimbatore and has taken treatment as in-patient under three different spells for 38 days and a

surgery was conducted in his right hand. The appellant examined P.W.2/Doctor, who deposed that the appellant has taken treatment in Ganga Hospital and on considering the medical records issued by Ganga Hospital, deposed that the appellant cannot do hard work and due to the same, P.W.2/Doctor has issued disability certificate to show that appellant suffered 50% permanent disability. The Tribunal considering the evidence of P.W.2/Doctor, discharge summaries issued by Ganga Hospital, Coimbatore, held that appellant underwent surgery and fracture was set right. In view of the three discharge summaries filed by the appellant, the Tribunal has held that P.W.2/Doctor was examined only for the purpose of issuing disability certificate. The Tribunal considering the disability certificate, fixed disability of the appellant as 40% and awarded compensation by granting a sum of Rs.3,000/- per percentage of disability. The Tribunal has given reason for reducing the percentage of disability and for not applying multiplier method. The reason given by the Tribunal for reducing the percentage of disability is proper and valid.

9.The appellant has contended that he was working as heavy vehicle driver and was earning a sum of Rs.10,000/- per month. The accident occurred in the year 2010 and a sum of Rs.6,000/- per month fixed by the Tribunal as notional income of the appellant is meagre. Therefore, a sum of Rs.10,000/- per month is fixed as notional income of the appellant. Due to the injuries and disability, the appellant would not have worked atleast for a period of six months. Therefore, a sum of Rs.25,600/- awarded by the Tribunal towards loss of income is modified to Rs.60,000/- [Rs.10,000/- X 6 months]. Considering the nature of injuries and period of treatment taken by the appellant, the compensation awarded by the Tribunal towards extra nourishment and pain and sufferings are meagre and the same are enhanced to Rs.10,000/- and Rs.20,000/- respectively. The compensation awarded by the Tribunal towards disability, medical expenses and transportation are just and reasonable and hence, they are 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.	Disability	1,20,000/-	1,20,000/-	Confirmed
2.	Pain and sufferings	10,000/-	20,000/-	Enhanced

3.	Extra nourishment	5,000/-	10,000/-	Enhanced
4.	Transportation	8,000/-	8,000/-	Confirmed
5.	Medical expenses	3,27,494/-	3,27,494/-	Confirmed
6.	Loss of income	25,600/-	60,000/-	Enhanced
	Total	Rs.4,96,094/-	Rs.5,45,494/-	enhanced by Rs.49,400/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,96,094/- is hereby enhanced to Rs.5,45,494/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent 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, to the credit of M.C.O.P.No.182 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Namakkal. 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.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.S.Arun Kumar , Advocate SR.No. 1518
+3ccs to Mr.C.Thangaraja , Advocate SR.No. 871

C.M.A.No.826 of 2016

A.SK(23/09/2020)