

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.1496 OF 2018

Sampath

.. Appellant/Petitioner

Vs.

1. Manikandan

2. The Oriental Insurance Company Limited,
Siva Complex, 2nd Floor,
22C, Saradha college main road,
Salem 16.

.. Respondents/Respondents

(1st respondent remained exparte before the Tribunal)

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.07.2017 made in M.C.O.P.No.367 of 2015 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Salem.

For Appellant : M/s.T.Gayathri

For Respondents: Mrs.R.Sree vidhya for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 21.07.2017 made in M.C.O.P.No.367 of 2015 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Salem.

2.The appellant is the claimant in M.C.O.P.No.367 of 2015 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Salem. He filed the above said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 22.10.2014.

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 Tata Sumo belonging to the first respondent and directed the second respondent, as insurer of the vehicle to pay a sum of Rs.6,15,000/- 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. Learned counsel appearing for the appellant contended that the appellant was a student and was aged 19 years at the time of the accident and doing final year B.C.A degree. In the accident, he suffered Grade II compound segmental fracture tibia left, open patellar tendon injury right knee, fracture distal radius with fracture metacarpel head left thumb and has taken treatment as in-patient from 22.10.2014 to 10.11.2014. Further, due to the accident and the injuries suffered, the appellant could not do the work as he was doing earlier. The Tribunal considering the nature of injuries, ought to have adopted multiplier method in granting compensation. The amounts granted by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal, considering the fact that the injuries sustained by the appellant in the accident did not affect his earning capacity, has rightly held that the appellant is not entitled for compensation by applying multiplier method. The amounts awarded under different heads are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

8. From the materials on record, it is seen that in the accident, the appellant suffered Grade II compound segmental fracture tibia left, open patellar tendon injury right knee, fracture distal radius with fracture meta carpel head left thumb. The Medical Board has assessed the disability as 42% and the appellant has marked Disability Certificate as Ex.X1 to substantiate the same. The appellant failed to produce any material evidence to show his avocation and that he suffered functional disability and lost earning power. In view of the same, he is not entitled for compensation by adopting multiplier method. The appellant claimed that he was doing agricultural work and was earning a sum of Rs.12,000/- per month, but he has not produced any materials to substantiate the same. The

accident is of the year 2014. The notional income fixed by the Tribunal at Rs.4,500/- per month is meagre and the same is fixed at Rs.9,000/- per month. In view of the nature of injuries and the treatment taken by the appellant, he would not have worked atleast for six months. Hence, the compensation awarded towards temporary loss of income is enhanced to Rs.54,000/- (Rs.9,000/- x 6 months). The appellant has taken treatment as in-patient from 22.10.2014 to 10.11.2014. The amounts awarded by the Tribunal towards attendant charges, transportation and extra nourishment are meagre. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards attendant charges, transportation and extra nourishment are enhanced to Rs.25,000/-, Rs.10,000/- and Rs.30,000/- respectively. The Tribunal has not awarded any amount towards loss of amenities. A sum of Rs.25,000/- is granted towards loss of amenities. 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	1,26,000/-	1,26,000/-	Confirmed
2.	Transportation	1,500/-	10,000/-	Enhanced
3.	Extra nourishment	8,000/-	30,000/-	Enhanced
4.	Attender charges	5,000/-	25,000/-	Enhanced
5.	Medical charges	4,21,596/-	4,21,596/-	Confirmed
6.	Pain and sufferings	30,000/-	30,000/-	Confirmed
7.	Loss of amenities	-	25,000/-	Granted
8.	Temporary loss of income	22,500/-	54,000/-	Enhanced
	Total	6,14,596/-	7,21,596/-	Enhanced by Rs.1,07,000/-
	Rounded off to	6,15,000/-	7,22,000/-	Enhanced by Rs.1,07,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.6,15,000/- is enhanced to Rs.7,22,000/- along with interest and costs. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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.367 of 2015. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vkr

To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Salem.
2. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mrs.R.Sree vidhya, Advocate, S.R.No.4423
+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.3988

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C.M.A.No.1496 of 2018

LN(CO)
CS/29/10/2020

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