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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.1541 of 2020

Sundaravadivel ... Appellant/Claimant

Vs.

1. Murugesan

2. Reliance General Insurance Co., Ltd.,
3rd Floor, 408, Perundurai Road,
Erode district. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decree dated 29.06.2020, made in M.C.O.P.No.141 of 2016, on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondent 2 : Mr.S.Arunkumar

J U D G M E N T

Not satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, the claimant is before this Court with this appeal seeking enhancement of compensation.

2. The case of the appellant/claimant is that on 19.09.2015, at about 08.30 p.m. while he was trying to cross the Pallipalayam-Vepadai road, a two wheeler owned by the first respondent and insured with the second respondent came in a rash and negligent manner and dashed against the appellant/claimant, in which, he suffered serious injuries. Immediately, he was taken to a private hospital at Erode, and thereafter he was admitted in SKM Hospital and was taking treatment till 03.10.2015. Even after treatment, he suffered permanent disability and he was not able to discharge his duties as before, hence, claiming a sum of Rs.15,00,000/- as compensation, the appellant/claimant filed the claim petition before the Tribunal.

3. Before the Tribunal, the first respondent/owner of the vehicle remained ex parte. The second respondent / insurance



company contested the claim petition on the ground that due to the negligence of the appellant/claimant the accident had taken place and the appellant/claimant being a tortfeasor, the respondents are not liable to pay compensation. That apart, after the accident no criminal case has been filed against the driver of the two wheeler and he has also not having a valid driving licence. That apart, the compensation claimed by the appellant/claimant is highly excessive and speculative.

4. Before the Tribunal, in order to prove the case, the appellant/claimant examined himself as P.W.1 and marked as many as seven documents as Exs.P1 to P7. On the side of the respondents, no witness was examined however they marked as many as five documents as Exs.R1 to R5.

5. The Tribunal after considering the materials available on record, came to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the two wheeler. So far as the quantum of compensation is concerned, the appellant/claimant was referred to the Medical Board and the Medical Board has assessed the disability at 5% and the Tribunal awarded a sum of Rs.15,000/- (Rs.3000 x 5%). The Tribunal awarded a sum of Rs.10,000/- towards pain and suffering; Rs.5,000/- was awarded towards extra nourishment; Rs.5,000/- was awarded towards attender charges; Rs.61,600/- was awarded towards medical expenses; Rs.5,000/- towards transport expenses and Rs.21,000/- towards loss of income. Thus, the Tribunal arrived at a total compensation of Rs.1,22,600/-. Not being satisfied with the said compensation awarded by the Tribunal, the appellant/claimant seeking enhancement of compensation has filed the present appeal before this Court.

6. I have heard the learned counsel on either side and also perused the records carefully.

7. The claimant was a weaver aged about 45 years at the time of accident and he was earning a sum of Rs.10,000/- per month. In road road accident, he suffered injuries in the hip and had undergone surgery in a private hospital at Erode. During trial, the appellant/claimant was referred to the Medical Board for assessing his disability. The Medical Board assessed the disability at 5% and the Tribunal awarded a sum of Rs.3,000/- per percentage of disability and arrived at Rs.15,000/- towards disability. According to the learned counsel appearing for the appellant/claimant, it is totally inadequate. Perusal of the medical records, it could be seen that the appellant/claimant suffered hip injury and undergone a surgery and there is no evidence available on record to show that he suffered a permanent disability and there is loss of future income due to the injuries sustained by him. In the said circumstances, the



Tribunal treated his injuries as permanent disability and awarded Rs.3,000/- per percentage of disability. Considering the fact that the appellant/claimant is a weaver and aged about 45 years and the accident took place in the year 2015, I am inclined to award Rs.4,000/- per percentage of disability instead of Rs.3,000/- awarded by the Tribunal. Hence a sum of Rs.20,000/- is awarded towards disability instead of Rs.15,000/- awarded by the Tribunal. Towards pain and suffering the appellant/claimant was admitted in two hospitals and undergone surgery hence a sum of Rs.15,000/- is granted instead of Rs.10,000/-. Towards extra nourishment a sum of Rs.10,000/- is granted instead of Rs.5,000/-. For attendant charges the Tribunal has granted only Rs.5,000/- as the appellant/claimant was admitted in the hospital twice and had undergone surgery and even thereafter he required medical assistance, hence a sum of Rs.15,000/- is awarded instead of Rs.5,000/-. A sum of Rs.62,000/- is granted towards medical expenses. Towards loss of income, the Tribunal has granted only 21,000/- as the claimant had suffered hip injury and was bedridden for nearly six months, even assuming the monthly income as Rs.7,000/-, he is entitled to get a sum of Rs.45,000/- towards loss of income instead of Rs.21,000/- awarded by the Tribunal. In respect of other heads are concerned, the Tribunal has rightly granted compensation and there is no need to interfere with the same.

8. In view of the above, the compensation awarded by the Tribunal is modified as follows:

S1 . No .	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
1.	Permanent Disability	15,000	20,000	Enhanced
2.	Pain and sufferings	10,000	15,000	Enhanced
3.	Extra nourishment and damage to articles	5,000	10,000	Enhanced
4.	Attender charges	5,000	15,000	Enhanced
5.	Medical expenses	61,600	62,000	Enhanced
6.	Transport expenses	5,000	5,000	Confirmed
7.	Loss of income	21,000	45,000	Enhanced
	Total	1,22,600	1,72,000	Enhanced by Rs.49,400/-



9. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.1,22,600/- awarded by the Tribunal is hereby enhanced to Rs.1,72,000/- together with interest at the rate of 7.5 % per annum from the date of claim petition till the date of deposit. The second 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 to the credit of M.C.O.P.No.141 of 2016, on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Tiruchengode and recover the same from the first respondent/owner of the vehicle in the manner known to law. On such deposit, the appellant/claimant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation now determined by this Court. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kk
To

The Motor Accident Claims Tribunal,
Subordinate Judge,
Tiruchengode.

+2cc to M/s.T.S.Arthanareeswaran, Advocate Sr.40328
+1cc to M/s.S.Arunkumar, Advocate Sr.39884

C.M.A.No.1541 of 2020

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