

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2284 of 2014

T.Vinayagam

... Appellant/Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Bharathipuram, Dharmapuri.

2.S.Manikandan (died)

3.The Branch Manager,
National Insurance Company Limited,
Branch Office, Opp. To RTC Bus Stand,
Hindupur - 515 201, Ananthapur District,
Andhra Pradesh State.

4.Mullai

5.Sekar

6.Jayalakshmi
(R4 to R6 impleaded and amended as per order
in I.A.No.1320 of 2009 dated 20.11.2009)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.06.2011 made in M.C.O.P.No.415 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri.

For Appellant : Ms.K.Prasanna
for Mr.M.Sriram

For R1 : Ms.P.Rajathi
for Mr.D.Raghu

For R3 : MrJ.Michael Visuvasam

For RR 5 & 6 : No appearance

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 28.06.2011 made in M.C.O.P.No.415 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri.

3.The appellant is the claimant in M.C.O.P.No.415 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri. He filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 22.10.2004. Pending claim petition, the 2nd respondent-owner of the tempo died and the respondents 4 to 6 were impleaded as legal heirs of the deceased 2nd respondent as per order dated 20.11.2009 made in I.A.No.1320 of 2009.

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 tempo belonging to the respondents 4 to 6 and directed the 3rd respondent-Insurance Company to pay a sum of Rs.83,500/- as compensation to the appellant and dismissed the claim petition as against the 1st respondent-Transport Corporation.

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 sustained grievous injuries all over his body. P.W.4/Doctor examined the appellant and certified that appellant suffered 30% disability and issued Ex.A7/disability certificate to that effect. The appellant was doing Seasonal Business in the Market and was earning a sum of Rs.5,000/- per month. Due to the injuries sustained by him in the accident, the appellant could not do any work as he was doing earlier and his entire life is affected. The Tribunal ought to have adopted multiplier method for awarding compensation towards loss of earning power. The Tribunal erred in reducing the percentage of disability from 30% to 25%. The Tribunal ought to have awarded compensation for 30% of disability. The amounts awarded by the Tribunal towards pain and sufferings, extra nourishment, transportation and attendant charges are meagre. P.W.4./Doctor deposed that appellant could not carry any weight in his right hand. Hence, the Tribunal ought to have awarded compensation towards loss of amenities and prayed for enhancement of

compensation.

7. Per contra, the learned counsel appearing for the 1st respondent-Transport Corporation contended that the Tribunal dismissed the claim petition as against the 1st respondent-Transport Corporation and no relief is sought against the 1st respondent-Transport Corporation and prayed for dismissal of the appeal as against the 1st respondent-Transport Corporation.

8. The learned counsel appearing for the 3rd respondent-Insurance Company contended that the appellant failed to prove that he suffered functional disability or loss of earning capacity. Hence, he is not entitled to any compensation by adopting multiplier method. P.W.4/Doctor did not assess the disability based on the Indian Guidelines or Workmen Compensation Act. The Tribunal considering the entire materials, reduced the percentage of disability from 30% to 25% and awarded compensation excessively at the rate of Rs.2,000/- per percentage of disability for 25% of disability. The accident occurred in the year 2004 and the amount awarded by the Tribunal towards disability is excessive. The total compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

9. Though notice has been served on the respondents 4 to 6 and their names are printed in the cause list, there is no representation on behalf of them, either in person or through counsel.

10. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent-Transport Corporation and the learned counsel appearing for the 3rd respondent-Insurance Company and perused the entire materials on record.

11. From the materials available on record, it is seen that it is the contention of the appellant that he was doing Seasonal Business in the Market and was earning a sum of Rs.5,000/- per month. The appellant failed to prove the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal has fixed a sum of Rs.4,500/- per month as notional income of the appellant and awarded a sum of Rs.13,500/- towards loss of income for three months. The accident occurred in the year 2004 and the compensation awarded by the Tribunal towards loss of income is not meagre. According to appellant, in the accident, he sustained grievous injuries and fracture. To substantiate the same, the appellant examined himself as P.W.3 and P.W.4/Doctor. P.W.4/Doctor examined the appellant and certified that he suffered 30% disability and issued Ex.A7/disability certificate to that effect. The Tribunal

considering the evidence of P.W.4/Doctor and Ex.A7/disability certificate, held that the disability certificate was not issued based on the Indian Medical Guidelines or Workmen Compensation Act and reduced the percentage of disability from 30% to 25% and granted compensation at the rate of Rs.2,000/- per percentage of disability for 25% of disability. The accident occurred in the year 2004 and the sum of Rs.50,000/- awarded by the Tribunal towards disability is not meagre. The appellant has not proved that he suffered functional disability and lost his earning capacity. Hence, he is not entitled to any compensation by adopting multiplier method. The appellant also has not produced any discharge summary for having taken treatment as inpatient. The Tribunal considering Ex.A6/wound certificate, awarded a sum of Rs.5,000/- towards extra nourishment, attendant charges and transportation. Considering the materials available on record and nature of injuries, the amount awarded by the Tribunal towards extra nourishment, attendant charges and transportation is enhanced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of amenities. Considering the nature of injuries and disability, the appellant is entitled to a sum of Rs.10,000/- towards loss of amenities. The amount awarded by the Tribunal towards pain and sufferings is just and reasonable and hence, the same is 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	50,000/-	50,000/-	Confirmed
2.	Pain and sufferings	15,000/-	15,000/-	Confirmed
3.	Loss of income	13,500/-	13,500/-	Confirmed
4.	Extra nourishment, Attendant charges & Transportation	5,000/-	15,000/-	Enhanced
5.	Loss of amenities	-	10,000/-	Granted
	Total	Rs.83,500/-	Rs.1,03,500/-	Enhanced by Rs.20,000/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.83,500/- is hereby enhanced to Rs.1,03,500/- together with interest at the rate of 7.5% per annum from the date of petition

till the date of deposit. The 3rd 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, to the credit of M.C.O.P.No.415 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri. On such deposit, the appellant 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. It is made clear that the appellant is not entitled to any interest for Rs.20,000/- the amount now enhanced by this Court, as per the order of this Court dated 25.07.2014 made in M.P.No.1 of 2014 in C.M.A.No.SR.73552 of 2013. This appeal is dismissed as against the 1st respondent-Transport Corporation. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Krishnagiri.

Copy to

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

+1cc to Mr.Mukund R.Pandiyar, Advocate SR.39869
+1cc to Mr.J.Michael Visuvasam, Advocate SR.39728
+1cc to Mr.D.Raghu, Advocate SR.39477

C.M.A.No.2284 of 2014

NRL (CO)
CB(07/04/2021)