

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2628 of 2014

Govindasamy

.. Appellant/Petitioner

Vs.

1.Sathya

(R1 was set exparte before the Tribunal)

2.The Divisional Manager,

United India Insurance Co. Ltd.,

No. 46, Katpadi Salai,

Vellore.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 05.06.2012, made in M.C.O.P. No. 205 of 2004, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Tiruvannamalai.

For Appellant : Mr.F. Terry Chellaraja

For Respondents: Mr.M.J. Vijayaraaghavan (for R2)

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 05.06.2012, made in M.C.O.P. No. 205 of 2004, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Tiruvannamalai.

2.The appellant-claimant filed M.C.O.P. No. 205 of 2004, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Tiruvannamalai, claiming a sum of Rs.2,99,000/- [value of the appeal claimed amended vide order of the Court dated 22.08.2013 made in M.P. No. 1 of 2013 in C.M.A. SR. 41604 of 2013] as compensation for the injuries sustained by him in the accident that took place on 01.06.2003.

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 Mini Bus

belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.99,000/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 05.06.2012, made in M.C.O.P. No. 205 of 2004, the appellant has come out with the present appeal.

5. Learned counsel appearing for the appellant contended that the appellant sustained injuries like fracture in the Distal end of left radius and distal end of left ulna (both bone fracture) and multiple injuries all over the body. The appellant proved the same by examining P.W.2 - Doctor, who has assessed that the appellant suffered 35% disability. The Tribunal reduced the same to 30% without assigning any reason. The appellant is entitled to compensation for 35% disability. The appellant has taken treatment in Vellore Government Hospital. The Tribunal has not awarded any amount towards attendant charges, loss of amenities and damage to clothes. At the time of accident, the appellant was working as an Agricultural Coolie and was earning more than Rs.3,000/- per month. The Tribunal fixed only a sum of Rs.3,000/- towards loss of income. Due to the injuries suffered in the accident, the appellant would not have worked at least for a period of 6 months. The amounts awarded by the Tribunal towards loss of income is meagre. In any event, the total compensation granted by the Tribunal under different heads are meagre and prayed for enhancement of the same.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the evidence of P.W.2-Doctor and disability certificate issued by him, rightly reduced the percentage of disability from 35% to 30% and awarded compensation towards disability. In the absence of any documentary evidence to prove the treatment taken by him, the Tribunal did not award any amount towards attendant charges, which is proper. The total compensation granted by the Tribunal is not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

8. It is the contention of the appellant that in the accident, he sustained fracture and multiple injuries all over the body and has taken treatment at Vellore Government Hospital. The appellant proved the same by examining P.W.2 - Doctor, who has assessed that the appellant suffered 35% disability and

issued disability certificate, marked as Ex.P6. Considering the medical records and the evidence of P.W.2 - Doctor, the Tribunal reduced the percentage of disability to 30%, which is proper. The Tribunal has not awarded any amount towards attendant charges, loss of amenities and damage to clothes. Though the appellant has not filed any discharge summary to show that he has taken treatment, considering the nature of injuries and the disability suffered, there is every possibility of incurring expenses towards attendant charges. Hence, a sum of Rs.5,000/- each is awarded towards attendant charges and loss of amenities and a sum of Rs.1,000/- towards damage to clothes. The amount awarded by the Tribunal towards extra nourishment is meagre and hence, the same is enhanced to Rs.10,000/-.

9. At the time of accident, the appellant was working as an Agricultural Coolie and was earning more than a sum of Rs.3,000/- per month. He has failed to prove the same. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.3,000/- per month as notional income, which is proper. Due to the injuries sustained in the accident, the appellant would not have worked atleast for a period of 4 months. Hence, the amounts awarded by the Tribunal towards loss of income is enhanced to Rs.12,000/- [Rs.3,000/- x 4 months]. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, they 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.	Disability	60,000/-	60,000/-	Confirmed
2.	Pain and suffering	20,000/-	20,000/-	Confirmed
3.	Extra nourishment	5,000/-	10,000/-	Enhanced
4.	Attendant charges	-	5,000/-	Granted
5.	Transport expenses	5,000/-	5,000/-	Confirmed
6.	Loss of income	9,000/-	12,000/-	Enhanced
7.	Damage to clothes	-	1,000/-	Granted

8.	Loss of amenities	-	5,000/-	Granted
	Total	99,000/-	1,18,000/-	Enhanced by Rs.19,000/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.99,000/- is enhanced to Rs.1,18,000/- along with interest and costs. The 2nd 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. 205 of 2004. 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. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.19,000/-. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gsa

To

1. The Principal Subordinate Judge,
(Motor Accident Claims Tribunal),
Tiruvannamalai.

Copy to

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

+1 CC to M/s.M. Malar, Advocate sr 23449

+1 CC to Mr.M.J.Vijaya Raghavan, Advocate sr 23299.

C.M.A. No. 2628 of 2014

LN (CO)

SP (09/11/2020)