

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3173 of 2014

Ananthakumar

... Appellant/Claimant

Vs.

1.Perumal

2.Royal Sundaram Alliance Insurance Company Limited,
1st floor, Sri Krishna Plaza,
No.1, Natchiappa Street,
Erode.

... Respondents/Respondents

(Notice to R1 dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.02.2014 made in M.C.O.P.No.86 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode.

For Appellant : Ms.T.Gayathri
for Mr.C.Kulanthaivel

For R2 : Mr.E.Rajadurai
for Mr.N.Vijayaraghavan

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 26.02.2014 made in M.C.O.P.No.86 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode.

3.The appellant is the claimant in M.C.O.P.No.86 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode. 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 14.10.2012.

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 omni van belonging to the 1st respondent and directed the respondents jointly and severally to pay a sum of Rs.1,18,522/- as compensation to the appellant.

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 in the accident, the appellant sustained grievous injuries and fractures of both the bones in right leg and right toe II with deep laceration in the right foot and malunited fractures of middle of right tibia and fibula bones and a surgery was conducted and steel nail and 3 screws were fixed inside the right tibia bone. Due to the injuries and disability, the appellant could not continue his work as Auto Driver. The appellant examined P.W.2 and P.W.3/Doctors and proved that he suffered loss of earning power and functional disability. The Tribunal ought to have granted compensation for 100% disability by adopting multiplier method. The Tribunal without considering the evidence of P.W.2 & P.W.3/Doctors and documents filed by the appellant, erroneously granted compensation only for 15% disability by adopting percentage method. P.W.2/Doctor in the disability certificate has stated that long steel nail and 3 screws were fixed and they should be removed by conducting another surgery which will cost Rs.15,000/- to Rs.20,000/-. The Tribunal failed to award any amount towards future medical expenses. The appellant has taken treatment in the hospital as in-patient from 14.10.2012 to 22.10.2012 for a period of 9 days. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. The amounts awarded by the Tribunal towards pain and sufferings, extra nourishment are meagre and prayed for enhancement of compensation.

7.Per contra, Mr.E.Rajadurai, learned counsel appearing for the 2nd respondent contended that the appellant failed to prove that he suffered functional disability and lost his earning capacity. P.W.2/Doctor, who treated the appellant has not issued any disability certificate and has not stated that appellant suffered disability and lost his earning power. P.W.2/Doctor is not the Doctor who treated the appellant. The Tribunal considering the evidence of P.W.2 & P.W.3/Doctors, reduced the percentage of disability and awarded compensation under different heads which are not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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

9. From the materials available on record it is seen that it is the contention of the appellant that in the accident, he sustained grievous injuries and fractures of both bones in right leg and right toe II with deep laceration in the right foot and malunited fractures of middle of right tibia and fibula bones. The appellant has taken treatment in the Tirukumaran Hospital, Tiruchengode as inpatient from 14.10.2012 to 22.10.2012 for 9 days. To substantiate the said contention, the appellant produced Ex.P4/discharge summary and also examined P.W.3/Doctor, who treated him in the hospital. In addition to that, the appellant examined P.W.2/Doctor, who examined the appellant and issued disability certificate stating that appellant suffered 35% partial permanent disability. The 2nd respondent has not let in any contra evidence to the evidence of P.W.2/Doctor. The Tribunal in the absence of any contra evidence, reduced the percentage of disability to 15% on the ground that assessment of P.W.2/Doctor is on the higher side. The said reasoning is not proper. The appellant is entitled to compensation for 35% disability.

10. The learned counsel appearing for the appellant contended that appellant suffered functional disability and hence he is entitled to compensation by adopting multiplier method. The appellant has not placed any material to substantiate the said contention. Hence, the appellant is not entitled to compensation by adopting multiplier method. The appellant is entitled to compensation for 35% disability only by adopting percentage method. The Tribunal has awarded a sum of Rs.2,000/- per percentage of disability which is meagre. The accident occurred in the year 2012 and the appellant is entitled to a sum of Rs.3,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,05,000/- (Rs.3,000/- X 35% of disability).

11. The appellant claimed that he was working as Auto Driver and was earning a sum of Rs.10,000/- per month. He failed to prove the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.5,000/- per month as notional income of the appellant. The accident occurred in the year 2012 and the notional income fixed by the Tribunal is meagre. Considering the year of accident, age and nature of work done by the appellant, a sum of Rs.7,500/- per month is fixed as notional income of the appellant. Due to the injuries and disability suffered by him in the accident, the appellant would not have worked at least for a

period of three months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.22,500/- (Rs.7,500/- X 3 months). The appellant has taken treatment in the Tirukumaran Hospitals, Tiruchengode as inpatient from 14.10.2012 to 22.10.2012 for 9 days and suffered disability. But the Tribunal has not awarded any amount towards attendant charges and loss of amenities. The appellant is entitled to a sum of Rs.10,000/- each towards attendant charges and loss of amenities. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards pain and sufferings and extra nourishment are enhanced to Rs.10,000/- each. The learned counsel appearing for the appellant referred to the evidence of P.W.2/Doctor and disability certificate issued by him and contended that appellant requires amount for future medical expenses. The respondents have not disproved the disability certificate issued by P.W.2/Doctor. Hence, the appellant is entitled to a sum of Rs.20,000/- towards future medical expenses. The amounts awarded by the Tribunal towards transportation, damages to clothes and medical expenses are just and reasonable and hence, the same 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	30,000/-	1,05,000/-	Enhanced
2.	Pain and sufferings	5,000/-	10,000/-	Enhanced
3.	Loss of income	15,000/-	22,500/-	Enhanced
4.	Medical expenses	60,522/-	60,522/-	Confirmed
5.	Extra nourishment	5,000/-	10,000/-	Enhanced
6.	Transportation	2,000/-	2,000/-	Confirmed
7.	Damages to clothes	1,000/-	1,000/-	Confirmed
8.	Attendant charges	-	10,000/-	Granted
9.	Loss of amenities	-	10,000/-	Granted
10.	Future medical expenses	-	20,000/-	Granted
	Total	Rs.1,18,522/-	Rs.2,51,022/-	Enhanced by Rs.1,32,500/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,18,522/- is hereby enhanced to Rs.2,51,022/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally 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.86 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode. 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. The appellant is directed to pay the necessary Court fee for the enhanced amount of compensation now determined by this Court. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruchengode.

Copy to

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

+1cc to Mr.C.Kulanthaivel, Advocate Sr.40783

C.M.A.No.3173 of 2014

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srg 05/03/2021