



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3641 of 2014

Ganesan

... Appellant/Claimant

Vs.

1.Poongulali

(R1 remained exparte before the Tribunal)

2.New India Assurance Co. Ltd.

Third Party Motor Claims Office

No.46, Moore street

Chennai-600 001.

... Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.03.2009 made in M.C.O.P.No.176 of 2006 on the file of Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.IV, Ponneri.

For Appellant: Ms.A.Subadra
for Ms.M.Malar

For R2 : Mr.R.Neethi Perumal

For R1 : Exparte

J U D G M E N T

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 25.03.2009 made in M.C.O.P.No.176 of 2006 on the file of Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.IV, Ponneri.

2.The appellant is claimant in M.C.O.P.No.176 of 2006 on the file of Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.IV, Ponneri. He filed the said claim petition claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by him in the accident that took place on 21.02.2006.

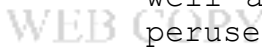


3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.1,32,575/- 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.The learned counsel appearing for the appellant contended that the appellant sustained multiple fractures, dislocation of left ankle and injuries all over the body. He has taken treatment as in-patient in Pallava Hospital from 21.02.2006 to 24.02.2006 and thereafter, has taken treatment as out-patient in Best Hospital and Dr.R.M.Alagappan Clinic. The appellant underwent surgery, plates and screws were implanted. To prove the nature of injuries and treatment taken, the appellant examined himself as P.W.1 and the Doctor as P.W.2. P.W.2/Doctor clinically examined the appellant and certified that the appellant suffered 75% partial and permanent disability. The Tribunal reduced the disability to 70% and granted only a meagre sum of Rs.1,05,000/- towards permanent disability and loss of earning power. P.W.2/Doctor deposed that the appellant sustained compound fracture of right tibia and the bone is malunited and muscles were tightened. The appellant was working as a driver and was earning a sum of Rs.4,500/- per month. The Tribunal erroneously fixed a meagre sum of Rs.3,500/- as monthly income of the appellant. Due to the injuries, the appellant could not stand and continue his work as a driver. The Tribunal ought to have granted compensation by adopting multiplier method. The amounts granted by the Tribunal towards transportation, extra nourishment and pain and sufferings are meagre. The Tribunal has not awarded any amounts towards attendant charges, loss of amenities, damage to clothes and future medical expenses and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not proved his avocation and income. The appellant has not suffered functional disability and lost his earning power and therefore, he is not entitled to compensation by adopting multiplier method. The Tribunal considering the oral and documentary evidence let in before it, awarded compensation by adopting percentage method. The compensation awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.



8. It is the contention of the appellant that he was working as a driver and was earning a sum of Rs.4,500/- per month. The appellant has marked the driving license as Ex.P6. The appellant has not produced any material evidence to prove his income. In the absence of material evidence with regard to income, the Tribunal fixed a sum of Rs.3,500/- per month as notional income of the appellant. The accident is of the year 2006 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.4,500/- is fixed as monthly income of the appellant as claimed by him. From the evidence of appellant as P.W.1 and the Doctor as P.W.2, it is seen that the appellant has suffered compound fracture on his leg, surgery was conducted and plates and screws were implanted. P.W.2/Doctor has deposed that due to the injuries and disability, the movements in ankle restricted and muscles were tightened. According to P.W.2/Doctor, the appellant could not stand and fold his leg. P.W.2/Doctor certified that the appellant suffered 75% partial and permanent disability. The Tribunal reduced the same to 70% and awarded a sum of Rs.1,05,000/- towards permanent disability and loss of earning power. The 2nd respondent has not let in any contra evidence to disprove the disability assessed by P.W.2/Doctor. Considering the nature of disability, avocation and the contention of the learned counsel appearing for the appellant that the appellant cannot continue his work as a driver, the appellant is entitled to compensation by adopting multiplier method and the loss of earning power is fixed at 35%. The appellant was aged 45 years at the time of accident. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the multiplier applicable is '14'. Thus, the appellant is entitled to a sum of Rs.2,64,600/- (Rs.4,500/- X 12 X 14 X 35%) towards permanent disability and loss of earning power.

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are meagre and hence, the same are hereby enhanced to Rs.5,000/-, Rs.5,000/- and Rs.20,000/- respectively. The learned counsel appearing for the appellant contended that the appellant underwent surgery, plates and screws were implanted. Hence, a sum of Rs.10,000/- is awarded towards future medical expenses for removal of plates and screws. The amounts awarded by the Tribunal under all 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 or reduced
1.	Loss of income	750	750	Confirmed
2.	Transportation	2,000	5,000	Enhanced
3.	Extra nourishment	3,500	5,000	Enhanced
4.	Medical bills	3,825	3,825	Confirmed
5.	Pain and suffering	17,500	20,000	Enhanced
6.	Permanent disability and loss of earning power	1,05,000	2,64,600	Enhanced
7.	Attendant charges	-	5,000	Granted
8.	Loss of amenities	-	10,000	Granted
9.	Future Medical Expenses	-	10,000	Granted
	Total	1,32,575	3,24,175	Enhanced by Rs.1,91,600 /-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,32,575/- is hereby enhanced to Rs.3,24,175/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The



2nd respondent 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. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court No.IV, Ponneri.

2.The Section Officer,
V.R.Section,
High Court, Chennai.

+1cc to M/s.M.Malar, Advocate Sr.36289

+1cc to M/s.R.Neethiperumal, Advocate Sr.36377

C.M.A.No.3641 of 2014

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srg 19/08/2021