

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1134 of 2017

M.Vinothkumar

... Appellant/Petitioner

Vs.

1.M.Gangadharan Mani

2.The Divisional Manager,

United India Insurance Co. Ltd.,

Katpadi Road,

Vellore 632 004.

... Respondents/Respondents

(1st respondent remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.07.2015 made in M.A.C.T.O.P.No.250 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore.

For Appellant : Mr.M.Manohar for
Mr.R.Rajarajan

For Respondents : Mr.C.Paranthaman for R2
R1- No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 28.07.2015 made in M.C.O.P.No.250 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore.

2.The appellant is the claimant in M.C.O.P.No.250 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore. He filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 31.07.2013.

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 Mahindra Maxi cab belonging to the first respondent and directed the second respondent, as insurer of the vehicle to pay a sum of Rs.3,90,850/- 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 suffered Grade 3 B open fracture in both the bones in his right leg and he had also undergone surgery for two times. Due to the fracture, he could not continue his work as earlier. The appellant examined P.W.3/Doctor to prove the nature of injuries and disability suffered by him. The Tribunal ought to have applied multiplier method and granted compensation. The Tribunal without assigning any reason reduced the percentage of disability from 40% to 20% and after applying multiplier method, awarded a sum of Rs.2,16,000/- towards disability. The appellant was working as an electrician and was earning a sum of Rs.20,000/- per month. The Tribunal has fixed a sum of Rs.5,000/- as notional income of the appellant per month and awarded a meagre sum of Rs.20,000/- (Rs.5,000/- x 4 months) towards loss of income. The Tribunal failed to award any amount under the heads of loss of amenities and discomfort of life. The compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, Mr.S.Arun kumar, learned counsel appearing for the second respondent- Insurance Company contended that in the absence of any evidence with regard to income of the appellant, the Tribunal has fixed notional income of the appellant at Rs.5,000/- per month and awarded a sum of Rs.20,000/- (Rs.5,000/- x 4) towards loss of income. The said amount is excessive and the Tribunal has given valid reason for reducing the percentage of disability. The appellant has not proved by any acceptable evidence that he could not do any work as he was doing earlier and he suffered 100% loss of earning capacity. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent- Insurance Company and perused the entire materials on record.

8. From the materials available on record, it is seen that the appellant has contended that he suffered Grade 3 B open fracture in both the bones in his right leg and he had also undergone surgery for two times. To substantiate the injuries

sustained by him, he has examined Dr. Shanmugasundaram as P.W.3, who assessed the disability of the appellant as 40% and Ex.P14/disability certificate was marked to prove the same. But the Tribunal has reduced the percentage of disability to 20% towards earning capacity, on the ground that the Doctor who issued disability certificate has not treated the appellant. The said reasoning is erroneous. Considering the nature of injuries, evidence of P.W.3/Doctor and materials on record, the appellant is entitled to compensation for 30% disability. The appellant was aged 26 years at the time of accident. Hence, applying the multiplier '18', the amount awarded by the Tribunal towards disability is modified to Rs.5,83,200/- {Rs.9,000/- x 12 x 18 x 30%}. According to the appellant, he was working as an electrician and was earning a sum of Rs.20,000/- per month. To prove the avocation and income of the appellant, he has produced the Identity card/ Ex.P11. The Tribunal has fixed the income of the appellant at Rs.5,000/- per month but awarded only a sum of Rs.20,000/- towards loss of income for a period of four months. The accident is of the year 2013 and the income fixed by the Tribunal is meagre. A sum of Rs.9,000/- is fixed as monthly income of the appellant. Hence, a sum of Rs.36,000/- (Rs.9,000/- x 4) is awarded towards loss of income for four months. According to the appellant, he has taken treatment as in-patient from 01.08.2013 to 12.08.2013 and again from 12.10.2013 to 16.10.2013. The Tribunal has granted a meagre sum of Rs.7,000/- altogether towards attendant charges and transportation. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.2,000/- and Rs.7,000/- are awarded towards attendant charges and transportation. The Tribunal has awarded a meagre sum of Rs.4,000/- towards extra nourishment and the same is hereby enhanced to Rs.15,000/-. The amounts granted by the Tribunal under the 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	2,16,000/-	5,83,200/-	enhanced
2.	Pain and sufferings	40,000/-	40,000/-	confirmed
3.	Loss of earning capacity	20,000/-	36,000/-	enhanced

4.	Transportation & Attender charges	7,000/-	7,000/- 2,000/-	enhanced
5.	Extra nourishment	4,000/-	15,000/-	enhanced
6.	Damages	1,000/-	1,000/-	confirmed
7.	Medical expenses	1,02,850/-	1,02,850/-	confirmed
	Total	Rs.3,90,850/-	Rs.7,87,050/-	enhanced by Rs.3,96,200/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,90,850/- is hereby enhanced to Rs.7,87,050/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second 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 eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Chief Judicial Magistrate,
Vellore.

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

+lcc to Mr.R.Rajarajan, Advocate Sr.3758
+lcc to Mr.C.Paranthaman, Advocate Sr.4452

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