

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1328 of 2017

Elumalai

.. Appellant/Claimant

Vs.

1.Vadivel Raja

2.Gokulraj

(R1 & R2 remained exparte before the Tribunal)

3.The Divisional Manager,
The National Insurance Company Limited,
No.19, Officer's Line,
Vellore.

4.The Divisional Manager,
The United India Insurance Company Limited,
No.95, Big Street,
Thiruvannamalai.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.04.2011 made in M.C.O.P.No.151 of 2004 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruvannamalai.

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

For R3 : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 29.04.2011 made in M.C.O.P.No.151 of 2004 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruvannamalai.

2.The appellant is the claimant in M.C.O.P.No.151 of 2004 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruvannamalai. 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 22.10.1998.

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 Tempo Van belonging to the 1st respondent and directed the respondents 1 and 3, being the owner and insurer of the Tempo Van to jointly or severally pay a sum of Rs.1,80,000/- as compensation to the appellant and dismissed the claim petition as against the respondents 2 and 4.

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 in the accident the appellant sustained multiple grievous injuries all over his body and due to the same, his left leg below knee was amputated. P.W.2/Doctor examined the appellant and certified that appellant suffered 75% disability and issued Ex.P10/disability certificate. P.W.2/Doctor deposed that the appellant has to depend upon others to do his personal activities. The Tribunal without giving any valid reason, reduced the percentage of disability to 60% and awarded meagre amount as compensation. The Tribunal ought to have awarded compensation for 75% disability. The appellant was working as Cleaner under the 2nd respondent's Transport Corporation and was earning a sum of Rs.3,000/- per month. Due to the injuries and disability sustained by him in the accident, he could not able to continue his work as he was doing earlier. Therefore, the Tribunal ought to have awarded compensation towards loss of earning capacity by adopting multiplier method. The appellant has taken treatment in the Kempa Gouda Institute of Medical Science Hospital and Research Centre, Bangalore as in-patient from 24.10.1998 to 18.12.1998 and the consolidated amount of Rs.50,000/- awarded by the Tribunal towards medical expenses, attendant charges, transportation is meagre. The Tribunal has not awarded any amounts towards extra nourishment, pain and sufferings, mental agony, loss of amenities, future prospects, loss of marital prospects and damages to clothes. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 3rd respondent-National Insurance Company contended that the Tribunal reduced the percentage of disability from 75% to 60% considering the evidence of P.W.2/Doctor in his cross examination. Hence, he is not entitled to compensation for 75% disability. The appellant has not proved that he lost his earning capacity. Therefore, he is not entitled to compensation towards loss of earning capacity by adopting multiplier method. The amounts awarded by the Tribunal under different heads are not meagre. 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 3rd respondent-National Insurance Company and perused the entire materials on record.

8. From the award passed by the Tribunal, it is the contention of the appellant that due to the injuries sustained by the appellant in the accident, his left leg below knee was amputated and he could not able to continue his work as he was doing earlier and he lost his earning capacity. P.W.2/Doctor examined the appellant and certified that the appellant suffered 75% disability and issued Ex.P10/disability certificate to that effect. The 3rd respondent-National Insurance Company did not let in any contra evidence to disprove the evidence of P.W.2/Doctor and Ex.P10/disability. The Tribunal reduced the percentage of disability to 60%. The reason given by the Tribunal for reducing the percentage of disability is not correct. Considering the entire materials on record, the disability suffered by the appellant is fixed at 50% as per Schedule I of Employees Compensation Act, 1923. Considering the nature of injuries and evidence of P.W.2/Doctor, this is a fit case to adopt multiplier method for awarding compensation towards permanent disability. The appellant has contended that he was working as Cleaner under the 2nd respondent's Transport Corporation and was earning a sum of Rs.3,000/- per month. He failed to prove the said contention. The accident occurred in the year 1998 and a sum of Rs.2,000/- per month is fixed as notional income of the appellant. The appellant was aged 22 years at the time of accident and the multiplier applicable is '17' as per II Schedule of Motor Vehicles Act, 1978. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.2,04,000/- [Rs.2,000/- X 12 X 17 X 50/100]. The Tribunal has not awarded any amounts towards extra nourishment, loss of amenities and

damages to clothes. The appellant is entitled to a sum of Rs.10,000/-, Rs.50,000/- and Rs.500/- respectively towards extra nourishment, loss of amenities and damages to cloth. The compensation awarded by the Tribunal towards medical expenses, attendant charges, transportation, pain and sufferings and loss of income are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Amount confirmed, enhanced or granted (Rs)
1.	Disability	60,000/-	2,04,000/-	Enhanced
2.	Pain and sufferings	20,000/-	20,000/-	Confirmed
3.	Medical expenses, attendant charges, transportation,	50,000/-	50,000/-	Confirmed
4.	Loss of income	50,000/-	50,000/-	Confirmed
5.	Loss of amenities	-	50,000/-	Granted
6.	Extra nourishment	-	10,000/-	Granted
7.	Damages to clothes	-	500/-	Granted
	Total	Rs.1,80,000/-	Rs.3,84,500/-	Enhanced by Rs.2,04,500/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,80,000/- is hereby enhanced to Rs.3,84,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 and 3 are jointly or severally 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, to the credit of M.C.O.P.No.151 of 2004 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruvannamalai. On such deposit, the appellant is permitted to withdraw the enhanced 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, if any

on the enhanced amount of compensation now determined by this Court. This appeal is dismissed as against the respondents 2 and 4. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

krk

To

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

Copy To

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

+1cc to Ms.M.Malar, Advocate SR.No.15433

+1cc to Mr.J.Chandran, Advocate SR.No.15314

C.M.A.No.1328 of 2017

RSV (CO)

GMV (19/04/2021)

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