

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1725 of 2017

R.Durai

... Appellant /Claimant

Vs.

1.The Managing Director
M/s.Aghin Roadways
No.37/15, Moolakadavu
Pandakkal, Pondy cherry-673 310.

2.M/s.Reliance General Insurance Co. Ltd.
2nd floor, PLA Kanagu towers
No.15-A, Thillai nagar
11th cross, Tiruchy-18.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 01.03.2017 made in M.C.O.P.No.755 of 2014 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Perambalur.

For Appellant : Ms.C.Sangamithirai

For R2 : Mr.S.Arunkumar

R1 : Left

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 01.03.2017 made in M.C.O.P.No.755 of 2014 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Perambalur.

2.The appellant is claimant in M.C.O.P.No.755 of 2014 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Perambalur. He filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.09.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said lorry to pay a sum of Rs.51,000/- 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/claimant contended that the appellant was earning a sum of Rs.15,000/- per month by working as a lorry driver. In the accident, he sustained grievous injuries and suffered 10% permanent disability. The Tribunal without considering the same, has fixed only a meagre sum of Rs.4,000/- as monthly income of the appellant and awarded only a sum of Rs.4,000/- towards loss of income. 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 2nd respondent/Insurance Company contended that the appellant has not produced any document to prove his avocation and income. In the absence of any material evidence, the Tribunal has rightly fixed the monthly income of the appellant as Rs.4,000/-. The Tribunal after considering the materials available on record, has awarded just compensation. 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 2nd respondent and perused all the materials available on record.

8.It is the contention of the appellant that he was aged 42 years at the time of accident and was earning a sum of Rs.15,000/- per month by working as a lorry driver. The appellant failed to prove the said contention. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.4,000/- as monthly income of the appellant and awarded a sum of Rs.4,000/- towards loss of income for one month. The accident is of the year 2012 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.10,000/- is fixed as monthly income of the appellant. According to the appellant, he sustained grievous injuries in the accident and marked Ex.P2/wound certificate to prove the injuries. The Medical Board has assessed the permanent disability of the appellant as 10% and issued Ex.P9/disability certificate. Due to the injuries sustained by the appellant, he

would not have attended his work atleast for three months. Therefore, a sum of Rs.30,000/- (Rs.10,000/- X 3) is awarded towards loss of income for three months. The appellant has taken treatment as in-patient in the Government Hospital, Perambalur, from 06.09.2012 to 08.09.2012. The Tribunal has awarded a sum of Rs.5,000/- altogether towards extra nourishment, attendant charges and transportation, which are meagre. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.10,000/- each is awarded towards extra nourishment and transportation and a sum of Rs.5,000/- is awarded towards attendant charges. The Tribunal has not awarded any compensation towards damage to clothes and hence, a sum of Rs.2,000/- is awarded towards damage to clothes. The amounts awarded by the Tribunal under all the 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	4,000	30,000	Enhanced
2.	Pain and suffering	10,000	10,000	Confirmed
3.	Extra nourishment, attendant charges and transportation	5,000	10,000 5,000 10,000	Enhanced
4.	Disability	30,000	30,000	Confirmed
5.	Medical expenses	2,000	2,000	Confirmed
6.	Damage to clothes	-	2,000	Granted
	Total	51,000	99,000	Enhanced by Rs.48,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.51,000/- is hereby enhanced to Rs.99,000/- 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 2nd respondent/Insurance Company 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/claimant 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(CCC)

//True Copy//

Sub Assistant Registrar

To

The Chief Judicial Magistrate,
The Motor Accidents Claims Tribunal,
Perambalur.

Copy to

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

+1cc to M/s.C.Sangamithirai, Advocate SR.4596
+1cc to M/s.S.Arunkumar, Advocate Sr.5007

C.M.A.No.1725 of 2017

ssi[col]
srg 16/12/2020

सत्यमेव जयते

WEB COPY