

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2137 of 2017

M.Ramesh

.. Appellant/ Petitioner

1.P.A.Abibullah Vs.

2.The Oriental Insurance Company Ltd.
Rep. by its Manager
Sidhdhaveerappa chetty street
Dharmapuri Town and Taluk.

(No relief sought against the 1st respondent.
Hence, notice is dispensed with)

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 17.04.2015 made in M.C.O.P.No.737 of 2011 on the file of Motor Accidents Claims Tribunal, Additional District Court, Dharmapuri.

For Appellant : Mr.M.Sivakumar

For R1 : No appearance

For R2 : Mr.M.J.Vijayaraghavan

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 17.04.2015 made in M.C.O.P.No.737 of 2011 on the file of Motor Accidents Claims Tribunal, Additional District Court, Dharmapuri.

2.The appellant is claimant in M.C.O.P.No.737 of 2011 on the file of Motor Accidents Claims Tribunal, Additional District Court, Dharmapuri. He filed the said claim petition claiming a

sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 11.10.2007.

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 bus belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said bus to pay a sum of Rs.2,66,830/- 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 due to the accident, the appellant suffered 3 c.m. shortening of right leg. P.W.2/Doctor has assessed the disability of the appellant as 55%. The Tribunal without giving any reason reduced the percentage of disability to 45%. The appellant suffered head injury and he has to take further treatment. The Tribunal failed to award compensation towards future medical expenses. The amounts awarded by the Tribunal towards pain and suffering, transportation and extra nourishment 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 that he is taking continuous treatment after discharge and therefore, he is not entitled to any compensation towards future medical expenses. 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.Though notice was served on the 1st respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

8.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.

9.It is the contention of the appellant that he was earning a sum of Rs.6,000/- per month by doing agricultural work and milk vending business. The appellant failed to substantiate 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.5,000/- as monthly income of the appellant and awarded a sum of Rs.15,000/- (Rs.5,000/- X 3 days) towards loss

of income for the treatment period. The accident is of the year 2007 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.6,000/- is fixed as monthly income of the appellant. Due to the injuries sustained by the appellant, he would not have attended his work atleast for six months. Hence, a sum of Rs.36,000/- (Rs.6,000/- X 6) is awarded towards loss of income for six months.

10. According to the appellant, he sustained both bones fracture and underwent surgery on his right leg, due to which, his right leg is shortened by 3 c.m. He has difficulty in walking, standing and sitting cross legged. P.W.2/Doctor has assessed the disability of the appellant as 55% and marked Ex.P9/permanent disability certificate & Ex.P10/x-ray to prove the injuries. The Tribunal reduced the disability to 45% on the ground that P.W.2/Doctor has examined the appellant after eight years from the date of accident, he has not filed any working sheet and awarded a sum of Rs.2,000/- per percentage of disability. The reason assigned by the Tribunal for reducing the percentage of disability is not proper. The appellant is entitled to compensation for 55% disability at the rate of Rs.2,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,10,000/- (Rs.2,000/- X 55%). The appellant has taken treatment as in-patient in Kurinchi hospital from 12.10.2007 to 07.11.2007. A sum of Rs.15,500/- and Rs.20,000/- awarded by the Tribunal towards attendant charges and pain & suffering respectively are meagre. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards attendant charges and pain & suffering are enhanced to Rs.20,000/- and Rs.30,000/- respectively. A sum of Rs.15,000/- altogether awarded by the Tribunal towards transportation and extra nourishment are meagre and the same are hereby enhanced to Rs.15,000/- each. The Tribunal has not awarded any compensation towards loss of amenities and hence, a sum of Rs.25,000/- is awarded towards loss of amenities. Though the appellant has contended that he is taking continuous treatment for his injuries, he has not produced any document to prove the same. Therefore, the appellant is not entitled to any compensation towards future medical expenses. The amount awarded by the Tribunal towards medical expenses is just and reasonable and hence, the same is 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.	Permanent disability	90,000	1,10,000	Enhanced
2.	Pain and suffering	20,000	30,000	Enhanced
3.	Transportation and extra nourishment	15,000	15,000 15,000	Enhanced
4.	Loss of income	15,000	36,000	Enhanced
5.	Attendant charges	15,500	20,000	Enhanced
6.	Medical expenses	1,11,330	1,11,330	Confirmed
7.	Loss of amenities	-	25,000	Granted
	Total	2,66,830	3,62,330	Enhanced by Rs.95,500/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,66,830/- is hereby enhanced to Rs.3,62,330/- 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.

-s/d-

Assistant Registrar(AD I)

True Copy

Sub-Assistant Registrar

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To

1.The Additional District Judge
The Motor Accidents Claims Tribunal
Dharmapuri.

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

+lcc to Mr.C.Prabhakaran , Advocate SR.No. 4929

+lcc to Mr.M.J.Vijayaraghavan, Advocate SR.No. 4798

C.M.A.No.2137 of 2017

A.SK(21/09/2020) .



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