

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2811 of 2017

G. Srinivasan .. Appellant/Petitioner

Vs.

- 1.M. Gunasekaran
- 2.S. Gurusamy
- 3.ICICI Lombard General Insurance Co. Ltd.,
Zenith House,
Keshavrao, Khade Marg,
Mahalakshmi, Mumbai 400 034. .. Respondents/Respondents

(R1 and R2 remained ex-parte before the Tribunal, hence notice may be dispensed with for the respondents 1 and 2 in this appeal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 15.04.2015, made in M.C.O.P. No. 290 of 2009, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Bhavani at Erode District.

For Appellant: Mr. Ma.P. Thangavel

For Respondents: Mrs. R. Sreevidhya (for R3)
Notice Dispose with (RR 1&2)

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 15.04.2015, made in M.C.O.P. No. 290 of 2009, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Bhavani at Erode District.

2.The appellant-claimant filed M.C.O.P. No. 290 of 2009, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Bhavani at Erode District, claiming a sum of Rs.20,00,000/- as compensation for the

injuries sustained by him in the accident that took place on 21.04.2009.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver of the Car belonging to the 2nd respondent and directed the respondents 1 to 3 as driver, owner and insurer of the vehicle respectively to jointly and severally pay a sum of Rs.5,04,998/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 15.04.2015, made in M.C.O.P. No. 290 of 2009, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended that the appellant was working in a Motel Stall and was earning a sum of Rs.5,000/- per month. In the accident, the appellant suffered grievous injuries and P.W.2- Doctor assessed the percentage of disability suffered by the appellant as 66%. Due to the injuries, he could not continue the work as he was doing earlier. The Tribunal ought to have applied the multiplier method and awarded compensation. The Tribunal ought to have taken minimum wages and added future prospects of 50% to arrive at the compensation. The Tribunal has not granted any amount towards future medical expenses. The amounts awarded by the Tribunal towards loss of amenities, extra nourishment, transportation and pain and suffering are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that in the absence of any evidence by the appellant to prove that he suffered functional disability, the Tribunal rightly considering the nature of injuries and evidence of P.W.2- Doctor, awarded compensation under the head, disability by applying percentage method. The Tribunal has granted compensation under different heads, which are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellant as well as the 3rd respondent and perused the materials available on record.

8.It is the contention of the appellant that due to the accident, he suffered grievous injuries and took treatment as in-patient in the Ganga Medical Centre & Hospital (P) Ltd., Coimbatore from 19.02.2010 to 02.03.2010 and subsequently, took treatment in the same Hospital from 30.12.2010 to 01.02.2011. P.W.2 - Doctor assessed the percentage of disability suffered by the appellant as 66%. The Tribunal reduced the same to 63% and granted a sum of Rs.1,26,000/- towards disability at the rate of Rs.2,000/- per percentage. This Court by the order dated 02.02.2018 made in this appeal, referred the appellant to the Medical Board at Erode for assessment of disability. The Medical Board has assessed the temporary disability of the appellant as 70%.

8(a) From the materials on record, it is seen that the appellant has not proved that he suffered any functional disability. Hence, he is not entitled to any compensation by applying multiplier method. However, the sum of Rs.1,26,000/- granted by the Tribunal towards disability by awarding Rs.2,000/- per percentage for 63% disability is meagre. The appellant is entitled to a sum of Rs.2,10,000/- towards disability at the rate of Rs.3,000/- per percentage for 70% disability. From Ex.P16, Follow Up Summary of the Ganga Medical Centre Hospital, it is seen that the appellant was admitted in the Hospital on 30.12.2010 and discharged on 01.02.2011 and from Ex.P17 - Discharge Summary of the Ganga Medical Centre Hospital, it is seen that the appellant was admitted in the same Hospital on 19.02.2010 and discharged on 02.03.2010. The Tribunal has not awarded any amount towards attendant charges for the 56 days of treatment taken by the appellant. Considering the period of treatment, a sum of Rs.30,000/- is granted towards attendant charges. The amounts awarded by the Tribunal towards extra nourishment and pain and suffering are meagre. Considering the nature of injuries, a sum of Rs.25,000/- is awarded towards extra nourishment and Rs.50,000/- is awarded towards pain and suffering.

8(b) The appellant contended that at the time of accident, he was aged 29 years, running a Motel Stall and was earning a sum of Rs.5,000/- per month. Considering the age and earning capacity of the appellant, the Tribunal has fixed a sum of Rs.5,000/- per month as notional income and awarded a sum of Rs.30,000/- towards loss of income for a period of six months. Considering the year of accident, age and future prospects of the appellant, a sum of Rs.6,500/- per month is fixed as the notional income of the appellant and the amount awarded by the Tribunal towards loss of income is enhanced to

Rs.39,000/- (Rs.6,500/- x 6 months). The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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	1,26,000/-	2,10,000/-	Enhanced
2.	Pain and suffering	25,000/-	50,000/-	Enhanced
3.	Extra nourishment	10,000/-	25,000/-	Enhanced
4.	Attendant charges	-	30,000/-	Granted
5.	Transport to Hospital	5,000/-	5,000/-	Confirmed
6.	Loss of income	30,000/-	39,000/-	Enhanced
7.	Dis-figuration and loss of amenities	20,000/-	20,000/-	Confirmed
8.	Medical expenses	2,88,998/-	2,88,998/-	Confirmed
	Total	5,04,998/-	6,67,998/-	Enhanced by Rs.1,63,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.5,04,998/- is enhanced to Rs.6,67,998/- along with interest and costs. The respondents are jointly and severally directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 290 of 2009. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.1,63,000/-. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.1,63,000/-, enhanced by

this Court, as per the order of this Court dated 06.09.2017,
made in C.M.P. No. 12659 of 2017 in C.M.A. SR. No. 79422 of
2016. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1.The IV Additional District Judge,
(Motor Accident Claims Tribunal),
Bhavani,
Erode District.

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

+1cc to Mr.MA.P.Thangavel, Advocate, S.R.No.4230

+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.5184

EV(CO)
CB(16/07/2020)



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