

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3079 of 2017

Silambarasan

... Appellant/Claimant

Vs.

1.Senthamarai

2.The National Insurance Co. Ltd.

Divisional Office-I

LRN complex

Saradha college road

Salem-7.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.02.2016 made in M.C.O.P.No.1483 of 2014 on the file of Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellant : Mr.S.S.Annadorai

For R2 : Mrs.R.Sreevidhya

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 24.02.2016 made in M.C.O.P.No.1483 of 2014 on the file of Motor Accident Claims Tribunal, Special District Court, Salem.

2.The appellant is claimant in M.C.O.P.No.1483 of 2014 on the file of Motor Accident Claims Tribunal, Special District Court, Salem. He filed the said claim petition claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by him in the accident that took place on 03.07.2014.

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 tipper 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.92,700/- 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 aged 19 years at the time of accident. The appellant sustained injury on his stomach, ileum portion of his stomach was ruptured, fracture of right hand wrist and underwent surgery in the stomach. He has taken treatment as in-patient in the hospital from 04.07.2014 to 09.07.2014 and marked Exs.P7 to P10/medical documents to prove the same. P.W.3/Dr.Mariyappan has assessed the disability of the appellant as 40% in respect of stomach. P.W.4/Dr.Arun has assessed the disability of the appellant as 25% in respect of fracture of his right hand wrist. The Tribunal considering the evidence of both P.W.3 and P.W.4/Doctors, fixed the disability of the appellant as 36% to the whole body. The Tribunal failed to award compensation towards future medical expenses. 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 that he is continuing 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. Heard the learned counsel appearing for the appellant as well as the 2nd respondent/Insurance Company and perused all the materials available on record.

8. It is the contention of the appellant that in the accident, he sustained injury on his stomach, ileum portion of his stomach was ruptured, fracture of right hand wrist and underwent surgery in the stomach. He examined Dr.Mariyappan as P.W.3, who has assessed the disability of the appellant as 40% in respect of stomach injuries and examined Dr.Arun as P.W.4, who has assessed the disability of the appellant as 25% in respect of fracture of his right hand wrist and marked Exs.P7 to P10/medical documents to prove the same. The Tribunal considering the evidence of both P.W.3 and P.W.4/Doctors, applied formula $(A+B) \times (90-A) / 90 = 65 \times 50 / 90 = 36\%$ fixed the disability of the appellant as 36% and awarded

a sum of Rs.72,000/- (Rs.2,000/- X 36%) towards disability at the rate of Rs.2,000/- per percentage of disability, which is meagre. Considering the nature of injuries sustained by the appellant, he is entitled to compensation for 50% disability. This Court by judgment dated 09.01.2020 made in C.M.A.No.4870 of 2020 in the case of M/s.IFFCO TOKIO General Insurance Company Limited vs. Venkatesh and another) fixed a sum of Rs.4,000/- per percentage for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2014. In view of the same, a sum of Rs.4,000/- is awarded per percentage of disability. Thus, a sum of Rs.2,00,000/- (Rs.4,000/- X 50%) is awarded towards disability.

9. According to the appellant, he has taken treatment as in-patient in the hospital from 04.07.2014 to 09.07.2014 and underwent surgery in stomach. The Tribunal awarded a sum of Rs.5,000/- and Rs.10,000/- towards extra nourishment and pain & suffering respectively. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards extra nourishment and pain & suffering are hereby enhanced to a sum of Rs.10,000/- and Rs.25,000/- respectively. The Tribunal has not awarded any compensation towards loss of amenities and damage to clothes and hence, a sum of Rs.10,000/- and Rs.2,000/- are awarded towards loss of amenities and damage to clothes respectively. The appellant has not produced any document to prove that he is continuing treatment and therefore, he is not entitled any compensation towards future medical expenses. 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.	Disability	72,000	2,00,000	Enhanced
2.	Attendant charges	5,000	5,000	Confirmed
3.	Extra nourishment	5,000	10,000	Enhanced
4.	X-ray charges	700	700	Confirmed
5.	Pain and suffering	10,000	25,000	Enhanced

6.	Damage to clothes	-	2,000	Granted
7.	Loss of amenities	-	10,000	Granted
	Total	92,700	2,52,700	Enhanced by Rs.1,60,000 /-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.92,700/- is hereby enhanced to Rs.2,52,700/- 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(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. Special District Judge,
The Motor Accident Claims Tribunal,
Salem.

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

+1cc to M/s.R.Sreevidhya, Advocate Sr.10248

C.M.A.No.3079 of 2017

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