

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 498 of 2017

A. Vinoth

.. Appellant

Vs.

1.Uthirakumar

2.The United India Insurance Co. Ltd.,
No. 73C, MTH Road, Ambattur,
Chennai 600 053.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 24.09.2009, made in M.C.O.P. No. 349 of 2007, on the file of the Fast Tract Court - IV, (Motor Accident Claims Tribunal), Ponneri.

For Appellant : Mr. I. Rathinavel

For Respondents: No appearance (For R1)

Mr. S. Arunkumar (for R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal is listed under the caption "for being spoken to".

2. Some mistake has crept in the judgment of this Court dated 30.01.2020 made in this Civil Miscellaneous Appeal. In view of the same, the said judgment dated 30.01.2020 made in C.M.A. No. 498 of 2017 is recalled and modified.

3. This appeal has been filed for enhancement of the compensation granted by the award dated 24.09.2009, made in M.C.O.P. No. 349 of 2007, on the file of the Fast Tract Court - IV, (Motor Accident Claims Tribunal), Ponneri.

4. The appellant-claimant filed M.C.O.P. No. 349 of 2007, on the file of the Fast Tract Court - IV, (Motor Accident Claims Tribunal), Ponneri, claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.03.2007.

5. 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 Lorry belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.4,18,000/- as compensation to the appellant.

6. Not being satisfied with the amounts awarded by the Tribunal in the award dated 24.09.2009, made in M.C.O.P. No. 349 of 2007, the appellant has come out with the present appeal.

7. Learned counsel appearing for the appellant contended that at the time of accident, the appellant was aged 21 years, working as Mason and was earning a sum of Rs.6,000/- per month. The Tribunal ought not to have considered the notional income of the appellant only for a period of 20 days. Due to the accident, the appellant suffered amputation of left hand and several other injuries and took treatment in Government General Hospital, Chennai, from 07.03.2007 to 16.04.2007 and produced Ex.P3 - Discharge Summary to prove the same. P.W.2 - Doctor assessed disability of the appellant as 85% and issued disability certificate which is marked as Ex.P8. The Tribunal ought to have granted compensation under the heads, pain and suffering, transportation to Hospital, medical expenses, extra nourishment and attendant charges. The compensation granted by the Tribunal towards loss of income is meagre and prayed for enhancement of the compensation.

8. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that in the absence of any evidence by the appellant to prove his avocation and income, the Tribunal fixed a sum of Rs.2,000/- per month as notional income and applied multiplier method in arriving compensation towards loss of income. The total compensation granted by the Tribunal is not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

9. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

10. Heard learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

11. The appellant claims to be a Mason and was earning a sum of Rs.6,000/- per month. The appellant has not produced any material with regard to his avocation and income. In the absence of any material evidence, the Tribunal fixed the notional income of the appellant as Rs.2,000/- per month and awarded compensation for 85% disability by adopting multiplier method and also awarded a sum of Rs.10,000/- for future medical expenses. From the materials on record, it is seen that the notional income fixed by the Tribunal is very low. At the same time, the appellant has not produced any document to prove his avocation and income. The accident is of the year 2007. Considering the year of accident, a sum of Rs.3,500/- is fixed as monthly income of the appellant. In the accident, the appellant sustained severe injuries and his left arm is amputated and he suffered 85% disability. The Tribunal considering the same, adopted multiplier method and awarded compensation. In addition, the Tribunal has awarded a sum of Rs.10,000/- towards future medical expenses and not awarded any amount under other heads. The appellant's left arm had been amputated and he has taken treatment as in-patient in Government General Hospital from 07.03.2007 to 16.04.2007. Though the appellant has not filed any document with regard to medical expenses, extra nourishment and transportation, he would have incurred some expenses towards the same. As per the Accident Register, Voter Identity card and the Disability Certificate, the appellant was aged 23 years at the time of accident. The Tribunal erroneously applied the multiplier '17'. The correct multiplier applicable is '18'. Hence, the amount granted by the Tribunal towards loss of income is modified to Rs.6,42,600/- [Rs.3,500/- x 12 x 18 x 85%]. The Tribunal has not awarded any amount towards pain and suffering, extra nourishment, medical expenses and damages to clothes. Considering the nature of injuries and period of treatment taken by the appellant, Rs.30,000/- is awarded towards pain and suffering, Rs.20,000/- towards extra nourishment, Rs.1,000/- towards damages to clothes, Rs.15,000/- towards medical expenses and Rs.5,000/- towards transportation. The amounts awarded by the Tribunal towards future medical expenses is just and reasonable and hence, the same is 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.	Loss of income	4,08,000/-	6,42,600/-	Enhanced
2.	Pain and suffering	-	30,000/-	Granted

3.	Extra nourishment	-	20,000/-	Granted
4.	Damages to clothes	-	1,000/-	Granted
5.	Future medical expenses	10,000/-	10,000/-	Confirmed
6.	Medical expenses	-	15,000/-	Granted
7.	Transportation	-	5,000/-	Granted
	Total	4,18,000/-	7,23,600/-	Enhanced by Rs.3,05,600/-

12. In the result, the judgment of this Court dated 30.01.2020 made in C.M.A. No. 498 of 2017 is recalled and the appeal is partly allowed. The amount awarded by the Tribunal at Rs.4,18,000/- is enhanced to Rs.7,23,600/- along with interest and costs. The 2nd respondent-Insurance Company is 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. 349 of 2007. 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.3,05,600/-. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gsa
To

1.The IV Judge,
Fast Track Court,
(Motor Accident Claims Tribunal), Ponneri.

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

+2ccs to Mr.T.P.Sekar , Advocate SR.No. 7473,29929

+1cc to Mr.S.Arun kumar , Advocate SR.No. 7808

C.M.A. No. 498 of 2017

A.SK(21.01.2021)