

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.561 of 2017

C.Murugesan

.. Appellant

Vs.

1.Sella Thangarajan

2.B.Chandrasekaran

3.Bajaj Alliance General Insurance
Company Limited

Coimbatore, Rep. by its Manager

Door No.11, philips park

III floor, Govt. College road

Coimbatore-18.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.04.2008 made in M.C.O.P.No.248 of 2006 on the file of Motor Accident Claims Tribunal, I Additional Sub Court, Erode.

For Appellant : Mr.V.Kathirvelu

For R2 : No appearance

For R3 : Mr.J.Michael Visuvasam

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 23.04.2008 made in M.C.O.P.No.248 of 2006 on the file of Motor Accident Claims Tribunal, I Additional Sub Court, Erode.

2.The appellant is claimant in M.C.O.P.No.248 of 2006 on the file of Motor Accident Claims Tribunal, I Additional Sub Court, Erode. He filed the said claim petition claiming a sum

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of Rs.6,50,000/- as compensation for the injuries sustained by him in the accident that took place on 27.05.2005.

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 3rd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.3,37,000/- 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 contended that the Tribunal failed to properly consider the evidence of P.W.1 and P.W.2. The Tribunal ought to have seen that witness of the appellant was not cross-examined by the respondents. Subsequent to the award, left leg of the appellant was amputated. The Tribunal ought to have awarded more compensation towards loss of income, extra nourishment and pain & suffering. The appellant has taken treatment as in-patient in Ortho hospital, Erode and Ganga hospital, Coimbatore. The Tribunal has not awarded any compensation towards attendant charges, loss of amenities and future medical expenses and prayed for enhancement of compensation.

6.The learned counsel appearing for the 3rd respondent/Insurance Company contended that the Tribunal has properly appreciated the oral and documentary evidence let in by the appellant and has awarded compensation under different heads, which are not meagre. 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 3rd respondent/Insurance Company and perused the entire materials available on record.

8.It is the contention of the appellant that at the time of accident, he was doing whole sale flower business and was earning a sum of Rs.7,000/- per month. He failed to substantiate the said contention. Due to the injuries sustained in the accident, he could not do the work as he was doing earlier. The Tribunal considering the evidence of P.W.2/Doctor, who deposed that the appellant is not able to walk without any help of others and due to the injuries, held that the appellant would have suffered more pain & suffering and incurred medical

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expenses. The Tribunal having held so, awarded only a meagre sum as compensation. The appellant has taken treatment as in-patient in the hospital from 28.05.2005 to 20.06.2005 and marked Ex.P9/discharge summary to prove the same. A perusal of Ex.P9 reveals that the appellant sustained fracture of left leg, spinal cord, hip, skin grafting was done and left leg shortened by 3 c.m. The learned counsel appearing for the appellant contended that the accident is of the year 2005, subsequent to the award of the Tribunal, the appellant was admitted in C.S.I. Hospital, Erode, on 25.05.2008, underwent surgery, left leg below knee was amputated on 27.05.2008 and filed additional typed set of papers to prove the same. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.3,000/- as monthly income of the appellant and awarded a sum of Rs.12,000/- (Rs.3,000/- X 4) towards loss of income for four months. The date of accident is 27.05.2005 and it will be just and reasonable to fix a sum of Rs.4,000/- as monthly income of the appellant. Due to the injuries, the appellant would not have attended his work atleast for 8 months. Thus, a sum of Rs.32,000/- (Rs.4,000/- X 8) is awarded towards loss of income for eight months.

9.From the materials available on record, it is seen that the Tribunal has not awarded any compensation towards loss of amenities and future medical expenses and a sum of Rs.30,000/- awarded by the Tribunal towards pain & suffering is also meagre. Considering the nature of injuries sustained by the appellant, he would have incurred some amount towards future medical expenses. Therefore, a sum of Rs.50,000/-, Rs.25,000/- and Rs.25,000/- are awarded towards pain & suffering, future medical expenses and loss of amenities respectively. 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	12,000	32,000	Enhanced
2.	Extra nourishment	5,000	5,000	Confirmed
3.	Medical expenses	2,00,000	2,00,000	Confirmed

4.	Pain & suffering	30,000	50,000	Enhanced
5.	Permanent disability and attendant charges	80,000	80,000	Confirmed
6.	Transportation	10,000	10,000	Confirmed
7.	Loss of amenities	-	25,000	Granted
8.	Future medical expenses	-	25,000	Granted
	Total	3,37,000	4,27,000	Enhanced by Rs.90,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,37,000/- is hereby enhanced to Rs.4,27,000/- 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. It is to be noted that a sum of Rs.25,000/- awarded by this Court towards future medical expenses carries 7.5% interest only from the date of this judgment till the date of deposit. It is made clear that the appellant/claimant shall not be entitled for any interest for the delay period on the enhanced amount of Rs.90,000/- as per the order of this Court dated 03.02.2017 made in M.P.No.1 of 2011 in C.M.A.SR.No.50673 of 2011. The 3rd 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

//True Copy//

Sub Assistant Registrar

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To

1.The I Additional Subordinate Judge
The Motor Accident Claims Tribunal
Erode.

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

+lcc to Mr.Michael Visuvasam, Advocate SR.7515

+lcc to Mr.V.Kadhirvelu, Advocate SR.7984

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