

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.811 of 2017

M.Palani

.. Appellant/Petitioner

Vs.

1.R.Durai

2.Royal Sundaram Alliance Insurance Company Limited,
New No.3, Old No.2, II Floor,
Khader Nawaz Road,
Nungambakkam, Chennai - 600 006.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.02.2014 made in M.C.O.P.No.2892 of 2011 on the file of the Motor Accident Claims Tribunal, Special Sub Court-I, Chennai.

For Appellant : Mr.K.Varadha Kamaraj
For R2 : Mr.M.Krishnamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 05.02.2014 made in M.C.O.P.No.2892 of 2011 on the file of the Motor Accident Claims Tribunal, Special Sub Court-I, Chennai.

2.The appellant is the claimant in M.C.O.P.No.2892 of 2011 on the file of the Motor Accident Claims Tribunal, Special Sub Court-I, Chennai. He filed the above said claim petition, claiming a sum of Rs.17,00,000/- as compensation for the injuries sustained by him in the accident that took place on 20.06.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the tanker lorry belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the tanker lorry to pay a sum of Rs.5,04,300/- as compensation to the appellant/claimant.

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 appellant was a flower vendor and was earning a sum of Rs.350/- per day, whereas, the Tribunal fixed a meagre sum of Rs.4,500/- per month as notional income of the appellant. P.W.2/Doctor assessed the percentage of disability suffered by the appellant as 60% and the Tribunal erroneously reduced the same to 45%. Though P.W.2/Doctor assessed that appellant suffered 60% disability, the Tribunal ought to have granted compensation for loss of earning power for 100% disability. The Tribunal has not granted any enhancement towards future prospects of the appellant. The Tribunal has not awarded any amount towards loss of earnings, disability, loss of amenities and attendant charges. The compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, Mr.M.Krishnamoorthy, learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal rightly reduced the percentage of disability assessed by P.W.2/Doctor on the ground that the appellant is already suffering from the ailment and because of that he lost sense in his left leg and thus the amputation of such left leg does not affect disability to an extent of 60%. The appellant has not produced any material evidence to prove his avocation and income. In the absence of any material evidence, a sum of Rs.4,500/- per month fixed by the Tribunal as notional income of the appellant is excessive. The appellant is not entitled to any enhancement towards future prospects and he is not entitled to any amounts as claimed for. The amounts awarded by the Tribunal under different heads are not meagre and the appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal. सत्यमेव जयते

7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent and perused the entire materials on record.

8. From the materials available on record, it is seen that P.W.2/Doctor certified that appellant suffered 60% disability. The Tribunal reduced the disability of the appellant to 45% by giving valid reasons and hence the same is not interfered with. The appellant has contended that he was a flower vendor and was earning a sum of Rs.350/- per day. The appellant failed to prove the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of

Rs.4,500/- per month as notional income of the appellant. The accident occurred in the year 2011 and the monthly income fixed by the Tribunal is meagre. Therefore, a sum of Rs.7,000/- per month including future prospects is fixed as notional income of the appellant. The Tribunal has adopted multiplier method for awarding compensation for disability, which is proper. In view of the above, the compensation awarded by the Tribunal towards disability is modified to Rs.6,04,800/- [Rs.7,000/- X 12 X 16 X 45/100]. The Tribunal has awarded a sum of Rs.15,000/- towards loss of marital and future prospects and amenities, which is meagre. Considering the nature of injuries and disability suffered by the appellant, the compensation awarded by the Tribunal towards loss of marital and future prospects and amenities is enhanced to Rs.30,000/-. 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	3,88,800/-	6,04,800/-	Enhanced
2.	Extra nourishment	20,000/-	20,000/-	Confirmed
3.	Pain and sufferings	30,000/-	30,000/-	Confirmed
4.	Loss of marital & future prospects and amenities	15,000/-	30,000/-	Enhanced
5.	Transportation	20,000/-	20,000/-	Confirmed
6.	Mental agony	10,000/-	10,000/-	Confirmed
7.	Medical expenses	20,000/-	20,000/-	Confirmed
8.	Damage to cloth	500/-	500/-	Confirmed
	Total	Rs.5,04,300/-	Rs.7,35,300/-	enhanced by Rs.2,31,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,04,300/- is hereby enhanced to Rs.7,35,300/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second 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 to the credit of M.C.O.P.No.2892 of 2011 on the file of the Motor

Accident Claims Tribunal, Special Sub Court-I, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. It is made clear that the appellant is not entitled for any interest for Rs.2,31,000/- the amount now enhanced by this Court, as per the order of this Court dated 15.02.2017 made in M.P.No.1 of 2014 in C.M.A.SR.No.67885 of 2014. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Special Subordinate Judge No.I,
Motor Accident Claims Tribunal,
Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras.

+2 CCS to Mr.V. Mohan Cyhodary, Advocate sr 2149
+1 CC to Mr.M.Krishnamoorthy, Advocate sr 2353.

C.M.A.No.811 of 2017

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SP(18/09/2020)

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