

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.819 of 2017

D.Sivakumar

.. Appellant/
Petitioner

Vs.

1. P.Dharmalingam

2. IFFCO - Tokio General Insurance Company Limited,
ITGI, Uisi Chambers,
3rd Floor, 195, TV Swamy Road (W),
RS Puram, Coimbatore.

.. Respondents/
Respondents

(R1 remained exparte before the Tribunal)

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.06.2011 made in M.C.O.P.No.356 of 2007 on the file of the Motor Accident Claims Tribunal/Principal District Court, Namakkal.

For Appellant : Mr.Ma.P.Thangavel

For Respondents: Mr.J.Michael Visuvasam
for R2

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 09.06.2011 made in M.C.O.P.No.356 of 2007 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

2.The appellant is the claimant in M.C.O.P.No.356 of 2007 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 25.02.2006.

3.The Tribunal considering the pleadings, oral and

documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the two wheeler bearing Registration No.TN 28 N 9383 belonging to the first respondent, insured with the second respondent and directed the respondents to jointly and severally to pay a sum of Rs. 7,55,000/- 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 appellant was a bike mechanic and he was running the workshop in the name & style of Kumar Auto Works and was earning not less than Rs.6,000/- per month. The Tribunal has fixed a meagre sum of Rs.3,000/- per month as income of the appellant. In the accident, the appellant suffered compound fracture in right leg, right hand, neck and head and marked Ex.P3/Wound Certificate. Due to the grievous injuries, there is no sensation in his right hand. Moreover, there is shortening of 2 cm in left leg. Though the Department of Rehabilitation of Disabled has assessed the permanent disability as 90%, it will affect his avocation 100% and the Tribunal ought to have fixed the disability at 100%. The appellant was aged 29 years at the time of the accident. Considering the age and disability, the Tribunal ought to have awarded 50% enhancement towards his future prospects. The Tribunal failed to award any amount towards future medical expenses, loss of amenities, attendant charges and Transport to hospitals. The amounts granted by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6. Per contra, learned counsel appearing for the second respondent/Insurance Company contended that in the absence of any oral or documentary evidence to prove his avocation and income, the Tribunal rightly fixed a sum of Rs.3,000/- per month as notional income, which is not meagre. The disability assessed by the Department of Rehabilitation of Disabled at 90% is on the higher side and the Tribunal ought to have reduced the percentage of disability. The amounts granted by the Tribunal under different heads are not meagre, the appellant has not made out any case for enhancement of the compensation and he prayed for dismissal of the appeal.

7. Heard learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent/Insurance Company and perused all the materials available on record.

8. It is the contention of the appellant that he was a bike

mechanic and running the workshop. He was earning less than Rs.6,000/- per month. The appellant has not filed any document to prove the same. In the absence of material evidence with regard to his avocation and income, the Tribunal fixed notional income of the appellant at Rs.3,000/- per month. The accident occurred in the year 2006 and the notional income fixed by the Tribunal is meagre. Therefore, a sum of Rs.5,000/- is fixed by this Court as monthly income of the appellant. The appellant was aged 29 years at the time of the accident. P.W.3/Doctor assessed that the appellant suffered 90% disability. The Tribunal considered the disability assessed by the Doctor and has rightly granted compensation by applying multiplier method. The age of the appellant is 29 years at the time of the accident. The correct multiplier applicable is 17. The Tribunal applied the multiplier '18' instead of '17'. Hence, by applying the correct multiplier '17', the compensation awarded by the Tribunal towards loss of earning capacity is modified to Rs.9,18,000/- [Rs.5,000/- X 12 X 17 X 90/100]. The appellant has taken treatment as in-patient in Aravindh Hospital, Namakkal, from 25.02.2006 to 29.03.2006 for about 33 days. The Tribunal has not awarded any amount towards attendant charges and Transportation. Considering the period of treatment, the appellant is entitled to a sum of Rs.50,000/- towards attendant charges and Rs.25,000/- towards Transportation. The Tribunal has awarded a meagre amount towards extra nourishment and the same is hereby enhanced to Rs.50,000/-. The Tribunal has not awarded any amount towards loss of damage to clothes. A sum of Rs.2,000/- is awarded towards loss of damage to clothes. The amounts awarded by the Tribunal under 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
1.	Loss of earning	5,83,200/-	9,18,000/-	Enhanced
2.	Pain & suffering	75,000/-	75,000/-	Confirmed
3.	Medical expenses	71,712/-	71,712/-	Confirmed
4.	Extra nourishment	25,000/-	50,000/-	Enhanced
5.	Attendant charges	-	50,000/-	Granted
6.	Transportation	-	25,000/-	Granted

7.	Loss of damage to clothes	-	2,000/-	Granted
	Total	7,54,912/-	11,91,712/-	Enhanced by Rs.4,36,800/-
	Rounded off to	7,55,000/-	11,91,800/-	Enhanced by Rs.4,36,800/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,55,000/- is hereby enhanced to Rs.11,91,800/- 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 respondents 1 and 2 are jointly and severally 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. It is made clear that the appellant/claimant is not entitled for any interest for the delay period on the amount of Rs.4,36,800/-, enhanced by this Court, as per the order of this Court dated 23.02.2017 made in M.P.No.1 of 2015 in C.M.A. (SR). No. 97549 of 2015. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vkr

To

1. The Principal District Judge,
The Motor Accident Claims Tribunal, Namakkal.
2. The Section Officer,
V.R Section, High Court, Madras.

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.2869

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.2594

C.M.A.No.819 of 2017

SSD(CO)

CS/11/02/2021