

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4824 of 2019

A.Baskaran

... Appellant/Petitioner

Vs.

1.C.Sundaramary

2.United India Insurance
Company Ltd. CB Hub,
1st Floor, 1-04-A,
Peramanur Main Road,
Peramanur, Salem - 636 007.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 01.08.2018 made in M.C.O.P.No.533 of 2017 on the file of Motor Accidents Claims Tribunal, Special Sub Court No.1, Salem.

For Appellant : Mr.A.Sathishkumar

For R2 : Mr.C.Paranthaman

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 01.08.2018 made in M.C.O.P.No.533 of 2017 on the file of Motor Accidents Claims Tribunal, Special Sub Court No.1, Salem.

2.The appellant is claimant in M.C.O.P.No.533 of 2017 on the file of Motor Accidents Claims Tribunal, Special Sub Court No.1, Salem. He filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 08.05.2016.

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 car belonging to the 1st respondent and directed the 2nd respondent/Insurance

Company being insurer of the said car to pay a sum of Rs.13,06,994/- 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 27 years at the time of accident and was earning a sum of Rs.15,000/- per month by working as Manager in National Borewell Company. Due to the permanent disability, the appellant lost his future prospects. The Tribunal without considering the same, has fixed only a meagre sum of Rs.6,500/- as monthly income of the appellant. In the accident, the appellant sustained multiple injuries. Due to the injuries, the appellant could not lift weight and found difficulty in sitting, standing and he could not do the work as he was doing earlier. P.W.2/Doctor has assessed the permanent disability of the appellant as 34.84%. The Tribunal ought to have awarded compensation towards loss of earning power as 100% disability. The appellant suffered functional disability and the Tribunal ought to have adopted multiplier method while awarding compensation towards disability. The appellant is still taking treatment for the injuries and the Tribunal ought to have awarded 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 his avocation and income. In the absence of any material evidence with regard to avocation and income of the appellant, the Tribunal fixed a sum of Rs.6,500/- as monthly income of the appellant, which is not meagre. The Tribunal after considering all the materials available on record in proper perspective, 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 learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

8. It is the contention of the appellant that he was aged 27 years at the time of accident and was earning a sum of Rs.15,000/- per month by working as Manager in National Borewell Company. The appellant failed to prove the said contention. In

the absence of any material evidence with regard to avocation and income of the appellant, the Tribunal fixed a sum of Rs.6,500/- as monthly income of the appellant and awarded a sum of Rs.26,000/- (Rs.6,500/- X 4) towards loss of income for four months. The accident is of the year 2016 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.10,000/- is fixed as monthly income of the appellant. Due to the injuries sustained by the appellant, he would not have attended his work atleast for eight months. Therefore, a sum of Rs.80,000/- (Rs.10,000/- X 8) is awarded towards loss of income for eight months.

9.It is the contention of the appellant that he sustained multiple injuries and suffered functional disability. To prove the said contention, he examined P.W.2/Doctor. P.W.2/Doctor has assessed the disability of the appellant at 34.84% and he has not deposed that the appellant suffered functional disability. The appellant has not proved that he suffered functional disability and therefore, he is not entitled to compensation towards disability by adopting multiplier method. The Tribunal accepting the evidence of P.W.2/Doctor, fixed the disability of the appellant as 34.84% and awarded a sum of Rs.1,04,520/- towards disability at the rate of Rs.3,000/- per percentage of disability. The accident is of the year 2016. The appellant has taken treatment as in-patient in Madurai Meenakshi Mission hospital from 09.05.2016 to 11.05.2016 and he has taken treatment as in-patient in Manipal Hospital, Salem, from 11.05.2016 to 15.06.2016 & 24.06.2016 to 27.06.2016 and has taken treatment as in-patient in SKS Hospital, Salem, from 03.08.2016 to 05.08.2016. A sum of Rs.10,000/- awarded by the Tribunal towards attendant charges is meagre. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.40,000/- is awarded towards attendant charges. The amounts awarded by the Tribunal towards extra nourishment, damage to clothes, pain & suffering and loss of amenities are meagre and the same are hereby enhanced to Rs.25,000/-, Rs.3,000/-, Rs.40,000/- and Rs.30,000/- respectively. The appellant has not produced any document to prove that he is taking treatment after discharge and therefore, he is not entitled to 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.	Pain and suffering	25,000	40,000	Enhanced
2.	Loss of income	26,000	80,000	Enhanced
3.	Medical expenses	11,13,900	11,13,900	Confirmed
4.	Transportation charges	10,824	10,824	Confirmed
5.	Extra nourishment	10,000	25,000	Enhanced
6.	Attendant charges	10,000	40,000	Enhanced
7.	Damage to clothes	1,750	3,000	Enhanced
8.	Loss of amenities	5,000	30,000	Enhanced
9.	Permanent disability	1,04,520	1,04,520	Confirmed
	Total	Rs.13,06,994/-	Rs.14,47,244 /-	Enhanced by Rs.1,40,250 /-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,06,994/- is hereby enhanced to Rs.14,47,244/- 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 made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.1,40,250/- enhanced by this Court as per the order of this Court dated 12.12.2019 in C.M.P.No.26458 of 2019 in C.M.A.SR.No.146646 of 2019. 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 VI)

//True Copy//

Sub Assistant Registrar

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To

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

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

+1cc to Mr.C.Paranthaman, Advocate Sr.1666
+2cc to Mr.C.Thangaraju, Advocate Sr.2363

C.M.A.No.4824 of 2019

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