

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4692 of 2019

Saravanakumar

.. Appellant/ Petitioner

Vs.

1.Radha

2.The United India Insurance Company Ltd.,
104-A, Ranga building
Peramanur main road
Near four roads, Salem-636 007.

3.Tamilselvi

4.The New India Assurance Company Ltd.,
Claims Hub-Salem, 2nd floor
Sethu krishna trade centre
13/31-1
Trichy main road
Gugai, Salem-636 006.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.07.2019 made in M.C.O.P.No.58 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Salem.

For Appellant : Mr.N.Eswaran

For R2 : Mr.C.Paranthaman

For R4 : Mr.J.Chandran

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 06.07.2019 made in M.C.O.P.No.58 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Salem.

2.The appellant is claimant in M.C.O.P.No.58 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Salem. He filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 17.07.2016.

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 goods vehicle belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said goods vehicle to pay a sum of Rs.1,99,341/- as compensation to the appellant. The Tribunal dismissed the claim petition as against the respondents 3 & 4.

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 19 years at the time of accident and was earning a sum of Rs.14,000/- per month by working as a cleaner in a travel bus. Due to the accident, the appellant has sustained lacerated wound on his right side ankle and foot with lateral malleolus fracture. He took treatment as in-patient in Neuro foundation hospital at Salem from 18.07.2016 to 25.07.2016, underwent surgery and split skin grafting was done. Therefore, he could not do the work as he was doing earlier. The Medical Board examined the appellant and assessed the disability of the appellant as 15%. He has marked Ex.P4/discharge summary and Ex.C1/disability certificate to prove his injuries. The amounts awarded by the Tribunal towards loss of income, extra nourishment, pain & suffering, transportation and attendant charges are meagre. The appellant is taking treatment till today and the Tribunal ought to have awarded compensation towards future medical expenses and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/United India Insurance Company contended that the appellant has not produced any document to prove that he is taking treatment till today and therefore, he is not entitled to

any amount towards future medical expenses. The Tribunal after considering the materials available on record, has awarded just compensation. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.The learned counsel appearing for the 4th respondent/New India Assurance Company Limited contended that the Tribunal has already dismissed the claim petition as against the 4th respondent/Insurance Company and therefore, the 4th respondent is not a necessary party in the appeal and prayed for dismissal of the appeal as against the 4th respondent.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 2 and 4 and perused all the materials available on record.

9.It is the contention of the appellant that he was aged 19 years at the time of accident and was earning a sum of Rs.14,000/- per month by working as a cleaner in a travel bus. The appellant has not let in any evidence to prove his avocation and income. In the absence of any evidence with regard to avocation and income of the appellant, the Tribunal has fixed a sum of Rs.7,500/- as monthly income of the appellant and awarded a sum of Rs.30,000/- (Rs.7,500/- X 4) towards loss of income for a period of 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. According to the appellant, he has sustained lacerated wound on his right side ankle and foot with lateral malleolus fracture. He took treatment as in-patient in Neuro foundation hospital at Salem from 18.07.2016 to 25.07.2016, underwent surgery and split skin grafting was done. The appellant has marked Ex.P4/discharge summary and Ex.C1/disability certificate issued by the Medical Board to prove his injuries. Considering the nature of injuries sustained by the appellant, he would not have attended his work atleast for a period of ten months. Therefore, a sum of Rs.1,00,000/- (Rs.10,000/- X 10) is awarded towards loss of income for a period of ten months. A sum of Rs.20,000/-, Rs.5,000/- and Rs.5,000/- awarded by the Tribunal towards pain and suffering, extra nourishment and attendant charges are meagre. Considering the age of the appellant as well as nature of injuries sustained and period of treatment taken by him, this Court awards a sum of Rs.50,000/-, Rs.20,000/- and Rs.15,000/- towards pain and suffering, extra nourishment and attendant charges respectively. Though the appellant has contended that he is now taking treatment for his injuries, he has not produced any document to prove the same. Therefore, the appellant is not entitled to any amount towards future medical expenses. The amounts awarded by the Tribunal under all the other heads are

just and reasonable and the same are hereby confirmed.

10.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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.	Permanent disability	45,000	45,000	Confirmed
2.	Pain and suffering	20,000	50,000	Enhanced
3.	Loss of amenities	25,000	25,000	Confirmed
4.	Medical bills	63,341	63,341	Confirmed
5.	Loss of income	30,000	1,00,000	Enhanced
6.	Transportation	5,000	5,000	Confirmed
7.	Extra nourishment	5,000	20,000	Enhanced
8.	Attendant charges	5,000	15,000	Enhanced
9.	Damage to clothes	1,000	1,000	Confirmed
	Total	1,99,341	3,24,341	Enhanced by Rs.1,25,000 /-

11.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,99,341/- is hereby enhanced to Rs.3,24,341/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appeal is dismissed as against the respondents 3 and 4. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. 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.II
The Motor Accident Claims Tribunal
Salem.

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

+2ccs to Mr.C.Paraneedharan , Advocate SR.No. 2068

+1cc to Mr.C.Paranthaman , Advocate SR.No. 719

C.M.A.No.4692 of 2019

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A.SK(02/09/2020)



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