

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4766 of 2019

D.Prabakaran

..Claimant/Appellant

Vs.

1.Jayakrishnan

2.The United India Insurance Company Limited,
No.66-68, Gandhi Road,
Kanchipuram - 631 501.

..Respondent/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.08.2019 made in M.C.O.P.No.239 of 2013 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Kanchipuram.

For Appellant : Mr.Y.Jyothish Chander
For Respondents : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 28.08.2019 made in M.C.O.P.No.239 of 2013 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Kanchipuram.

2.The appellant is the claimant in M.C.O.P.No.239 of 2013 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Kanchipuram. He filed the above said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 03.06.2012.

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 bus belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the bus to pay a sum of Rs.4,53,000/- 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 Medical Board assessed the percentage of disability suffered by the appellant at 30% but the Tribunal reduced the same to 20% and awarded a meagre sum of Rs.60,000/- as compensation towards disability. The appellant was working in G4S Security Services India (P) Ltd., Chennai and was earning a sum of Rs.13,000/- per month. The appellant also produced Ex.P5/pay slip, wherein the salary for the month of May, 2012 is shown as Rs.12,350/-. The Tribunal fixed a meagre sum of Rs.6,000/- per month as notional income of the appellant and awarded compensation towards loss of income only for one month. The appellant has taken treatment in the hospital as in-patient for 42 days and the compensation awarded by the Tribunal towards loss of income and attendant charges are meagre. The appellant underwent 4 operations and was implanted with plates in the knee and hence, the compensation awarded by the Tribunal towards pain and sufferings, extra nourishment and loss of amenities are meagre. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Though notice has been served on the respondents 1 and 2 and their names are printed in the cause list, there is no representation on behalf of them, either in person or through counsel.

7. Heard the learned counsel appearing for the appellant and perused the entire materials on record.

8. It is the contention of the appellant that he suffered injuries and underwent 4 operations and was implanted with plates in the knee. The Medical Board assessed percentage of disability suffered by the appellant as 30% and the Tribunal reduced the same to 20%, holding that the injuries and fracture suffered by the appellant can be cured by way of physiotherapy. The reason given by the Tribunal for reducing the percentage of disability is not valid and hence, the appellant is entitled to compensation for 30% disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.90,000/- (Rs.3,000/- X 30% of disability).

9. According to the appellant, at the time of accident, he was working in G4S Security Services India (P) Ltd., Chennai and was earning a sum of Rs.13,000/- per month. To substantiate his contention, he produced Ex.P5/pay slip for the month of May, 2012, whereas, the Tribunal fixed a meagre sum of Rs.6,000/- per

month as notional income of the appellant. The appellant has not examined the author of Ex.P5 to prove the same. The accident occurred in the year 2012 and the monthly income fixed by the Tribunal is meagre. Therefore, a sum of Rs.10,000/- per month is fixed as notional income of the appellant. Due to the injuries and period of treatment taken by the appellant, he would not have worked atleast for a period of six months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.60,000/- (Rs.10,000/- X 6 months). The appellant has taken treatment in the hospital as in-patient for 42 days from 06.06.2012 to 05.07.2012 and from 25.07.2012 to 06.08.2012. The Tribunal has awarded a meagre sum of Rs.6,300/- towards attendant charges and hence, the same is enhanced to Rs.35,000/-. Considering the percentage of disability, nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards pain and sufferings, extra nourishment and transportation are meagre and the same are enhanced to Rs.25,000/-, Rs.20,000/- and Rs.10,000/- respectively. The Tribunal has not awarded any amount towards loss of amenities. Therefore, a sum of Rs.20,000/- is awarded towards loss of amenities. The amount awarded by the Tribunal towards medical expenses is just and reasonable and hence, the same is 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	60,000/-	90,000/-	Enhanced
2.	Loss of income	6,000/-	60,000/-	Enhanced
3.	Pain and sufferings	10,000/-	25,000/-	Enhanced
4.	Extra nourishment	2,000/-	20,000/-	Enhanced
5.	Medical expenses	3,67,561/-	3,67,561/-	Confirmed
6.	Transportation	1,000/-	10,000/-	Enhanced
7.	Attendant charges	6,300/-	35,000/-	Enhanced
8.	Loss of amenities	-	20,000/-	Granted
	Total	Rs.4,52,861/- rounded off to Rs.4,53,000/-	Rs.6,27,561/- rounded off to Rs.6,27,600/-	enhanced by Rs.1,74,600/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,53,000/- is hereby enhanced to Rs.6,27,600/- 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.239 of 2013 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Kanchipuram. 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. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Kanchipuram.

+1 CC to Mr.Y.Jyothish Chander, Advocate sr 4171.

C.M.A.No.4766 of 2019

AD(CO)
SP(27/11/2020)

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