

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 4751 of 2019

Gokul

.. Appellant /Claimant

Vs.

1.Kuppusamy

2.Reliance General Insurance Co. Ltd.,

3rd Floor, 408, Perundurai Road,

Erode 638 001.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 30.09.2019, made in M.C.O.P. No. 298 of 2014, on the file of the Sub Court, (Motor Accident Claims Tribunal), Tiruchengode.

For Appellant : Mr. T.S. Arthanareeswaran

For Respondent : Mr. S. Arunkumar (for R2)

R1 : Exparte before the Tribunal

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 30.09.2019, made in M.C.O.P. No. 298 of 2014, on the file of the Sub Court, (Motor Accident Claims Tribunal), Tiruchengode.

2.The appellant-claimant filed M.C.O.P. No. 298 of 2014, on the file of the Sub Court, (Motor Accident Claims Tribunal), Tiruchengode, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 21.01.2014.

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 TVS Star City Motorcycle belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.1,61,550/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 30.09.2019, made in M.C.O.P. No. 298 of 2014, the appellant has come out with the present appeal.

5. Learned counsel appearing for the appellant contended that at the time of accident, he was working as a part time Computer Instructor and was earning a sum of Rs.10,000/- per month. The Tribunal has fixed a meagre sum of Rs.6,000/- per month as notional income and awarded only a sum of Rs.24,000/- towards loss of income for a period of 4 months. Due to the accident, the appellant suffered grievous injuries and fractures (crush injury in right foot with skin loss with open 4th and 5th metatarsal fracture) and took treatment as in-patient in Ganga Medical Centre and Hospital, Coimbatore from 22.01.2014 to 26.01.2014, for a period of 5 days and again took further treatment on 10.02.2014 at the same Hospital and underwent surgery with skin grafting and k wire were fixed. The Medical Board has assessed the percentage of disability suffered by the appellant as 15%. The Tribunal has granted only meagre sum towards disability. Due to the accident, the appellant is facing difficulty in sitting, standing and walking. He is unable to do the work as he was doing earlier. The Tribunal has not awarded any amount towards loss of amenities. The amounts awarded by the Tribunal towards extra nourishment, pain and suffering, transportation and attendant charges are meagre and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering Ex.P10 - disability certificate issued by the Medical Board, has awarded a sum of Rs.45,000/- towards permanent disability, which is not meagre. In the absence of any material evidence produced by the appellant to prove his avocation and income, the Tribunal has granted a sum of Rs.24,000/- towards loss of income, which is not meagre. The Tribunal has granted compensation under different heads, which are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

8. It is the contention of the appellant that due to the accident, the appellant suffered grievous crush injuries and fractures and has taken treatment as in-patient in Ganga Medical Centre and Hospital, Coimbatore from 22.01.2014 to 26.01.2014, for a period of 5 days and again took further

treatment on 10.02.2014 at the same Hospital and underwent surgery with skin grafting and k wire were fixed. The Medical Board has assessed the percentage of disability suffered by the appellant as 15%. The amount awarded on percentage basis was periodically enhanced. This Court by judgment dated 09.01.2020 made in C.M.A. No. 4870 of 2020 in the case of M/s. IFFCO TOKIO General Insurance Company Limited Vs. Venkatesh and another), fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2014. Hence, a sum of Rs.4,000/- per percentage of disability is granted and the appellant is entitled to a sum of Rs.60,000/- (Rs.4,000/- x 15) for 15% disability. The Tribunal has not awarded any amount towards loss of amenities and damages to clothes. Considering the nature of injuries, the appellant is entitled to a sum of Rs.10,000/- towards loss of amenities and Rs.2,000/- towards damages to clothes.

8(a) According to the appellant, at the time of accident, he was working as part time Computer Instructor and was earning a sum of Rs.10,000/- per month. He has not substantiated the same. In the absence of any material evidence to prove his avocation and income, the Tribunal has rightly fixed a sum of Rs.6,000/- per month as notional income of the appellant. The same is proper. 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.	Permanent disability	45,000/-	60,000/-	Enhanced
2.	Pain and suffering	20,000/-	20,000/-	Confirmed
3.	Extra nourishment	10,000/-	10,000/-	Confirmed
4.	Attendant charges	5,000/-	5,000/-	Confirmed
5.	Medical expenses	47,550/-	47,550/-	Confirmed
6.	Transportation	10,000/-	10,000/-	Confirmed

7.	Loss of amenities	-	10,000/-	Granted
8.	Damages to clothes	-	2,000/-	Granted
9.	Loss of income	24,000/-	24,000/-	Confirmed
	Total	1,61,550/-	1,88,550/-	Enhanced by Rs.27,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,61,550/- is enhanced to Rs.1,88,550/- along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 298 of 2014. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.27,000/-. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Tiruchengode.

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

+1cc to Mr.S.Arunkumar, Advocate SR.9567

+2cc to Mr.c.Paraneedharan, Advocate SR.9116

C.M.A. No. 4751 of 2019

VBA(CO)
CB(15/09/2020)