



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.12.2020

Pronounced on : 26.02.2021

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.1067 of 2012

R.Arumugham

S/o.T.Rajagopal

..Appellant/Petitioner

Vs.

1.S.Elumalai

(Remained ex-parte before the Trial Court)

2.M/s.ICICI Lombard General Insurance Co.Ltd.

Aarthi Chambers, First Floor,

No.189, Anna Salai, Chennai-18.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 01.07.2011 made in M.C.O.P.No.262 of 2008 on the file of Motor Accidents Claims Tribunal, Additional District and Session Court, Fast Track Court No.III, Chennai.

For Appellant	: Mr.T.G.Balachandran
For R2	: Mrs.Sree Vidhya
R1	: Exparte

J U D G M E N T

(heard through video-conferencing)

This Civil Miscellaneous Appeal is filed, seeking for enhancement of compensation granted by the Tribunal in the award dated 01.07.2011 made in M.C.O.P.No.262 of 2008 on the file of Motor Accidents Claims Tribunal, Additional District and Session Court, Fast Track Court No.III, Chennai.

2.The appellant is claimant in M.C.O.P.No.262 of 2008 on the file of Motor Accidents Claims Tribunal, Additional District and Session Court, Fast Track Court No.III, Chennai. He filed the said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 25.11.2007.

Brief facts:



3. On 25.11.2007, at about 09.00 hours, the appellant was proceeding in a motorcycle bearing Registration No. TN-22-K-5049 at C.P. Ramasamy Road from South to North near the junction of Abiramapuram 4th Street and at that time, a LMV Goods Van bearing Registration No. TN-04-H-9441 driven by its driver in a rash and negligent manner from East to West and hit against the motorcycle. Due to which, the appellant caused severe injuries.

4. The Tribunal, after considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the LMV Goods Van, belonging to the first respondent and directed both 1st respondent/owner of the LMV Goods Van as well as the 2nd respondent/Insurance Company to jointly and severally pay a sum of Rs. 1,27,748/- as compensation to the appellant.

5. Not being satisfied with the amounts awarded by the Tribunal under various heads, the appellant has come out with the present appeal seeking enhancement of compensation.

Points for consideration is as follows:

Whether the appellant is entitled to enhanced as prayed for?

6. Mr. T.G. Balachandran, learned counsel appearing for the appellant relied on the following rulings in support of his submissions regarding enhancement:

1. "New India Assurance Co. Ltd., Vs. Boopathy Kannan and 2 others" reported in 2013 (1) TNMAC 445 (DB).

2. "Renganathan Vs. The Managing Director, Tamil Nadu State Transport Corporation" reported in 2013 (1) TNMAC 452.

3. "The Managing Director, Tamil Nadu State Transport Corporation (VPM DIV III) Limited, Kancheepuram Vs. Y. Selvaraj" reported in 2007 (2) TNMAC 208.

4. "The Managing Director, Tamil Nadu State Transport Corporation (Villupuram Division III) Ltd., Vs. Meenatchi Sathanantham", reported in 2007 (2) TNMAC 211 (DB).

7. Among the rulings cited by the learned counsel appearing for the appellant, 2007(2) TANMAC 211 is with regard to fatal accident and the compensation awarded under each head in fatal accident is different from compensation awarded in grievous cases where the victim suffers permanent disability either partial or total. Here, the P.W.2/Doctor had deposed that the evidence regarding nature of injuries suffered by the appellant as claimant before the Tribunal. He had assessed the partial permanent disability as 55%. It is the grievance of the appellant that the Tribunal had failed to consider 55% disability, but mechanically assessed as 30% disability and for



each percent Rs.2,000/- was fixed. Thereby the total amount awarded under the head for disability is Rs.60,000/- which had prompted this claimant to file this appeal.

8.The Tribunal had in its order, stated the reasons for not allotting the award under the head "loss of income" due to permanent disability as the appellant herein at the time of the accident was working as a Postman. Therefore, he being a Central Government Employee, will be protected under the Rules regarding availing of leave and payment of salary during the period of medical leave. He was under treatment for the period of four month for which he can avail medical leave with salary. Therefore, there is no loss of income during the period of treatment, but, no reason had been stated in reducing the partial permanent disability from 55% to 30%. The Doctor who had assessed the disability of the appellant herein as 55%, had deposed as P.W.2. He had stated that the appellant who is a claimant is unable to write as usual with his right hand and his right hand also affected. Therefore, he had assessed 55% since it is not a functional disability affecting the avocation of the claimant, per 1% disability, Rs.3,000/- is fixed (Rs.3,000/- X 55 = Rs.1,65,000/-). The Tribunal awarded a meagre sum of Rs.5,000/- towards extra nourishment and the same is enhanced to Rs.15,000/-, for Transportation Rs.1,000/- was awarded and the same is enhanced to Rs.10,000/- and for Pain and sufferings Rs.30,000/- was awarded and the same is enhanced to Rs.50,000/-. The Tribunal has not awarded any amount towards loss of amenities and also attendant charges. This Court granted a sum of Rs.50,000/- and Rs.20,000/- towards loss of amenities and attendant charges respectively. The amounts awarded by the Tribunal under other heads are just and reasonable and hence the same are confirmed.

9.Loss of earning power cannot be granted since the claimant was employed in Central Government Service as Postman and he had the benefit of medical leave with salary for his medical treatment period. Therefore, the same cannot be granted.

10.Under the head loss of earning power, the appellant is not entitled to any amount since he had not suffered functional disability affecting his earning power he was working as Postman at the time of accident. He was under medical treatment for four months and six days. During the period of treatment as a Government servant, he is entitled to salary during the period of medical leave. Therefore, he was not suffered either loss of earning power or loss of income or permanent loss of income due to his disability. There is no functional disability effecting his avocation. Therefore, under the head loss of earning power or income for the said period, cannot be granted. The head, 'mental agony' and 'stress' are one and the same suffering and



towards this head, the amount cannot be granted twice. Already Rs.50,000/- as sought by the appellant had been granted. Likewise, under the head of Medical expenses no amount was granted as his medical treatment is covered under the Government service medical leave rules. Whatever is spent towards medical expenses, would be reimbursed by the Government. Therefore, under the head "medical expenses", no amount can be granted.

11. Accordingly, point for consideration is answered in favor of the appellant/claimant and as against the respondent/Insurance Company. The modification of award amount under the various heads, are 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.	Disability	60,000/-	1,65,000/-	Enhanced
2.	Medical Bills	30,748/-	30,748/-	Confirmed
3.	Pain and Sufferings	30,000/-	50,000/-	Enhanced
4.	Extra nourishment	5,000/-	15,000/-	Enhanced
5.	Transportation	1,000/-	10,000/-	Enhanced
6.	Damage to clothing & articles	1,000/-	1,000/-	Confirmed
7.	Attendant charges	-	20,000/-	Granted
8.	Loss of amenities	-	50,000/-	Granted
9.				
	Total	Rs.1,27,748/-	Rs.3,41,748/-	Enhanced by - Rs.2,14,000 /-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,27,748/- is hereby enhanced to Rs.3,41,748/- together with interest at the rate of 9% per annum from the date of petition till the date of deposit. Both the 1st respondent/owner of the vehicle as well as the 2nd respondent/Insurance Company 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 to the credit of M.C.O.P.No.262 of 2008 on the file of



Motor Accidents Claims Tribunal, III Additional District and Session Court, Fast Track Court, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

s/d-
Assistant Registrar(CS IV)

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Sub-Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Additional District and Session Judge,
Fast Track Court No.III, Chennai.

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

+1 CC to M/s.R. Sree Vidya, Advocate sr 12877

+1 CC to Mr.T.G.Balachandran, Advocate sr 12726.

C.M.A.No.1067 of 2012

SSD(CO)
SP(07/09/2021)