

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.03.2021

CORAM:

HONOURABLE MR.JUSTICE R.SUBBIAH

and

HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.191 of 2021

M.Mohamed Suhaif
S/o.Mohamed Jalal ... Appellant/Claimant

Vs.

1.M.Sahip Marakayar
S/o.Musthafakamal

2.The Iffco-Tokio General Insurance Co.Ltd.,
No.43/3, First Floor, 100 Feet Road,
Mudaliarpeta, Pondicherry-605 004. ... Respondents/
Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.12.2019 made in M.C.O.P.No.3 of 2015 on the file of Motor Accidents Claims Tribunal, Principal District Court, Cuddalore.

For Appellant : Mr.Ramya V.Rao

For R2 : Mr.B.Sivakolapan

For R1 : Ex-parte

JUDGMENT

(heard through video-conferencing)

(Order of the Court was made by SATHI KUMAR SUKUMARA KURUP,J.)

The Civil Miscellaneous Appeal is filed by the claimant seeking enhancement of compensation granted by the Tribunal in the award dated 20.12.2019 made in M.C.O.P.No.3 of 2015 on the file of Motor Accidents Claims Tribunal, Principal District Court, Cuddalore.

2.The appellant is claimant in M.C.O.P.No.3 of 2015 on the file of Motor Accidents Claims Tribunal, Principal District Court, Cuddalore. He filed the said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the injuries sustained by him in the accident that took place on 28.10.2014.

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 to pay a sum of Rs.9,80,000/- as compensation to the appellant/claimant, at the first instance and recover the same from the 1st respondent/owner of the car.

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

The brief facts relates to this appeal are as follows:

5.On 28.10.2014, at about 00.45 a.m., the appellant/claimant was travelling in a car bearing Registration No.TN-31-AJ-6976 belonging to the 1st respondent herein, on Cuddalore to Nellikuppam Road. When the car was proceeding near Hindu Mission Hospital, the driver of the car drove the same at high speed in a rash and negligent manner and hit against the road side tree. Due to the accident, the claimant suffered grievous injuries and multiple fractures. He was immediately taken to Government Hospital, Cuddalore and then he was transferred to JIPMER Hospital, Puducherry. Later on he was shifted to Global Health City, Chennai for advanced treatment and still now he is undergoing treatment. The accident was only due to rash and negligent driving by the driver of the car. The claimant filed the claim petition in M.C.O.P.No.3 of 2015 before the Motor Accidents Claims Tribunal, Principal District Court, Cuddalore. On enquiry and after appreciation of evidence, the Tribunal had passed the award granting Rs.9,80,000/- to the appellant/claimant.

6.In the appeal, it has been stated that the claimant had sustained traumatic brain injury, right temporal bone fracture, right temporal contusion, right parietal SDH, Facio maxillary injury, fracture right zygomatic complex, chest injury right multiple rib fracture with tension pneumothorax. But the Tribunal, without considering the evidence adduced by the injured/claimant had assessed the disability at 30% which is not inconsonance with the nature of injuries suffered. The Tribunal ought to have considered awarding compensation by applying multiplier method as the injury sustained in the head had

severely affected his avocation as Computer Engineer. The learned Tribunal failed to calculate the loss of income during the period of treatment and other heads, such as Extra nourishment, attendant charges, transportation, loss of amenities and loss of future earnings. The Tribunal had granted Rs.3,000/- per percentage of disability and adopted the percentage method instead of multiplier method. Therefore, the award passed by the Tribunal is on the lower side.

7.Mrs.Ramya Rao, learned counsel for the appellant had in her arguments, submitted that the learned Motor Accidents Claims Tribunal, Principal District Court, Cuddalore failed to invoke the multiplier method for awarding compensation. The learned Tribunal had applied the percentage method which has resulted in miscarriage of justice to the claimant. The evidence let in by the claimant as P.W.1 and the Doctors evidence as P.W.2 had been ignored by the Tribunal. Therefore, the learned counsel for the appellant seeks enhancement of the award amount.

8.Mr.B.Sivakolapan, learned counsel appearing for the 2nd respondent/Insurance Company had submitted that the learned Tribunal is right in adopting percentage method in this case. The learned Tribunal had properly appreciated the evidence and calculated the compensation reasonably. If what had been stated by the appellant herein is true, he would not have let in evidence as P.W.1. He himself had cogently spoken to as witness and recollected from memory regarding the accident and subsequent developments in his evidence. Therefore, the learned Tribunal had rightly assessed the disability at 30%. In any event, the learned Tribunal had awarded Rs.3,000/- per percentage of disability and thereby passed a reasonable award. The appeal lacks merits and it is liable to be dismissed.

9.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the materials available on record.

10.Now the point for consideration is whether the appellant is entitled for enhancement of the compensation as prayed for by him?

POINT:

11.The contention of the learned counsel appearing for the appellant is that in the accident, the appellant suffered traumatic brain injury, right temporal bone fracture, right temporal contusion, right parietal SDH, Facio maxillary injury, fracture right zygomatic complex, chest injury right multiple rib fracture with tension pneumothorax. The Medical Board,

Cuddalore, certified that the appellant suffered 30% of disability. As per Ex.C1 (Dated 16.10.2017) - Disability Certificate along with covering letter issued by Member, Medical Board, GH, Cuddalore. Based on this, the percentage method adopted by the Tribunal is proper. The accident took place on 28.10.2014. The Tribunal had granted a sum of Rs.3,000/- per percentage of disability. 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 of disability for the accident occurred from the year 2016 onwards, due to rise in cost of living. In the present case, the accident is of the year 2014 and hence, the appellant is entitled to compensation at the rate of Rs.4,000/- per percentage of disability. Thus, the amount awarded by the Tribunal towards permanent disability is enhanced to Rs.1,20,000/- (Rs.4,000/- X 30% of disability).

12.It is the contention of the appellant/claimant that at the time of accident, he was working as Computer Engineer and was earning a sum of Rs.10,000/- per month. The learned Tribunal had not awarded any amount towards 'loss of income' during the period of treatment. Considering the age and nature of work and the accident is of the year 2014, a sum of Rs.10,000/- is fixed as monthly income of the appellant. Thus, the compensation granted by this Court towards 'loss of income' is Rs.1,20,000/- (Rs.10,000/- X 12 months). The Tribunal has awarded a sum of Rs.75,000/- altogether towards pain and suffering, loss of amenities, attendant charges, travel expenses and extra nourishment which are meagre. Hence, a sum of Rs.50,000/- towards pain and sufferings, Rs.50,000/- towards loss of amenities Rs.15,000/- towards attendant charges, Rs.15,000/- towards travel expenses and Rs.25,000/- towards extra nourishment is hereby awarded. The Tribunal has not awarded any amount towards future medical expenses and a sum of Rs.50,000/- is hereby awarded towards future medical expenses. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are confirmed. Accordingly, the Point is answered. Now 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.	Loss of income	-	1,20,000/-	Granted

2.	Disability	90,000/-	1,20,000/-	Enhanced
3.	Pain and sufferings, Loss of amenities, Attendant charges, Travel expenses and Extra nourishment	75,000/-	50,000/- 50,000/- 15,000/- 15,000/- 25,000/-	Enhanced
4.	Future medical expenses	-	50,000/-	Granted
5.	Medical expenses	8,15,101.50/-	8,15,101.50/-	Confirmed
	Total	Rs.9,80,101.50/- (rounded off to Rs.9,80,000/-)	Rs.12,60,101.50/- (rounded off to Rs.12,60,000/-)	Enhanced by Rs.2,80,000/-

13. Accordingly, point for consideration is answered in favour of the appellant/claimant and in the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,80,000/- is hereby enhanced to Rs.12,60,000/- together with interest at the rate of 8% per annum from the date of petition till the date of deposit. The appellant is directed to pay the necessary Court fee, if any, on the enhanced amount of compensation. The 2nd respondent, insurer of the motorcycle 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.3 of 2015 on the file of Motor Accidents Claims Tribunal, Principal District Court, Cuddalore, at the first instance and recover the same from the 1st respondent, owner of the vehicle. 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.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

gbi

To

1.The Principal District Judge,
Motor Accidents Claims Tribunal,
Cuddalore.

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

+2cc to Mr.B.Sivakolapan, Advocate SR.No.16865

+2cc to Mr.AN.Viswanathan Rao, Advocate SR.No.16580

C.M.A.No.191 of 2021

LN (CO)
GMY (11/05/2021)



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