



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1073 of 2018
[video conferencing]

P.Ganapathy ... Appellant / Petitioner
Vs.
1.Krishnan
2.The New India Assurance Co., Ltd.,
Motor TP HUB 30, Jawaharlal Street,
Pondicherry ... Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Fair and Decreetal award dated 09.01.2018 passed in M.C.O.P.No.255 of 2015, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Vridhachalam.

For Appellant : Mr.S.Udayakumar
For R1 : Ex-parte
For R2 : Mr.C.Ramesh Babu

JUDGMENT

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award passed in M.C.O.P.No.255 of 2015 dated 09.01.2018 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Vridhachalam.

2.The appellant is the claimant in M.C.O.P.No.255 of 2015, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Vridhachalam. He filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.04.2015.

3.The Tribunal considering the pleadings, oral and



documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus owned by 1st respondent and directed the 2nd respondent to pay a sum of Rs.5,86,500/- as compensation to the appellant.

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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 right leg below knee of the appellant was amputated and the appellant lost his entire earning capacity. The Government Head Quarters Hospital, Cuddalore certified that the appellant suffered 60% permanent disability and issued Ex.P11/disability certificate to that effect. At the time of accident, the appellant was a Cattle and Goat Merchant and also doing other business and was earning a sum of Rs.20,000/- per month. The Tribunal fixed a sum of Rs.6,500/- per month as notional income of the appellant and awarded compensation towards loss of income only for five months and the same is meager. The Tribunal ought to have fixed a sum of Rs.9,000/- as monthly income of the appellant and awarded compensation. For the injuries sustained by the appellant in the accident, his right leg below knee was amputated and steel plate was fixed. The Tribunal failed to award any amount for future medical expenses. The amounts awarded by the Tribunal towards loss of income, transportation, extra nourishment, attendant charges, pain and sufferings, loss of discomfort and permanent disability are meagre and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Assurance Company contended that the Tribunal considering the age, materials placed before it, nature of injuries, treatment taken and disability awarded compensation under different heads. The Tribunal accepted the disability certificate issued by the Medical Board and awarded a sum of Rs.3,90,000/- for 100% loss of earning capacity by adopting multiplier method and the same is not meagre. The appellant has not produced any document to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, a sum of Rs.6,500/- per month fixed by the Tribunal as notional income of the appellant is not meagre. The appellant failed to produce any materials to substantiate that he requires future medical treatment. Hence, he is not entitled for compensation towards future medical expenses. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

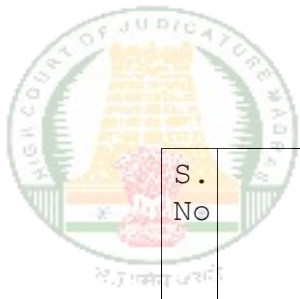


7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Assurance Company and perused the entire materials placed on record.

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8. It is the case of the appellant that in the accident he suffered severe crush injury and his right leg below knee was amputated and artificial leg was fixed. To prove the nature of injuries and disability suffered by him, the appellant examined himself as P.W.1. It is the further case of the appellant that he lost his entire earning capacity and the Government Head Quarters Hospital, Cuddalore examined the appellant and certified that the appellant suffered 60% permanent disability and issued disability certificate Ex.P11 to that effect. The Tribunal considering the nature of work done by the appellant, age and nature of injuries sustained by him, fixed the loss of earning capacity of the appellant at 100% and awarded compensation for loss of earning capacity by adopting multiplier method, which is just and reasonable and hence, the same is confirmed.

9. It is the further case of the appellant that at the time of accident he was aged 69 years working as Cattle and Goat Merchant and so also doing other business and was earning a sum of Rs.20,000/- per month. The accident is of the year 2015 and the appellant has not filed any acceptable evidence to prove his income. The Tribunal considering the deposition of appellant that at the time of accident he was working as Cattle and Goat Merchant, fixed a sum of Rs.6,500/- per month as notional income, applied multiplier '5' and awarded a sum of Rs.3,90,000/- towards disability and the same is not meagre. From the award passed by the Tribunal, it is seen that the appellant has taken treatment at Jipmer Hospital, Pondicherry as inpatient for 31 days from 29.04.2015 to 29.05.2016. The appellant was aged 69 years at the time of accident and hence, he would have suffered more pain. Therefore, a sum of Rs.74,000/- awarded by the Tribunal towards pain and sufferings is meagre and the same is enhanced to Rs.1,00,000/-. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards extra nourishment, attendant charges and loss of discomfort are meagre and hence, the same are enhanced to Rs.30,000/-, Rs.25,000/- and Rs.30,000/- respectively. The appellant has not produced any medical records to show that he requires further medical treatment. Hence, he is not entitled to any amount towards future medical expenses. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby 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.	Loss of income	Rs.32,500/-	Rs.32,500/-	Confirmed
2.	Transportation	Rs.30,000/-	Rs.30,000/-	Confirmed
3.	Extra nourishment	Rs.20,000/-	Rs.30,000/-	Enhanced
4.	Attendant charges	Rs.15,000/-	Rs.25,000/-	Enhanced
5.	Pain and Sufferings	Rs.74,000/-	Rs.1,00,000/-	Enhanced
6.	Loss of discomfort	Rs.25,000/-	Rs.30,000/-	Enhanced
7.	Permanent disability	Rs.3,90,00/-	Rs.3,90,000/-	Confirmed
	Total	Rs.5,86,500/-	Rs.6,37,500/-	Enhanced by Rs.51,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,86,500/- is hereby enhanced to Rs.6,37,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the 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.255 of 2015 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Vridhachalam. On such deposit, the appellant is permitted to withdraw the 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.

Sd/-

Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

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To:

1.The Motor Accidents Claims Tribunal,
Principal Subordinate Judge, Vridhachalam.

2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.C.Ramesh Babu, Advocate SR.No.62252

C.M.A.No.1073 of 2018

VSN II(CO)
GN(03/01/2022)