



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1101 of 2018

M.Krishnan

... Appellant/Claimant

Vs.

1. P.Sankar

2. The Royal Sundaram Alliance Insurance Company,
Vellore.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.08.2010 made in M.C.O.P.No.695 of 2005 on the file of the Motor Accidents Claims Tribunal cum Sub-Court, Tirupattur, Vellore District.

For Appellant : Mr.R.Jayaprakash

For R1 : No Appearance

For R2 : Mr.N.Vijayaraghavan
Mr.B.Raghavan
for M/s.M.B.Gopalan Associates

JUDGMENT

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 13.08.2010 made in M.C.O.P.No.695 of 2005 on the file of the Motor Accidents Claims Tribunal cum Sub-Court, Tirupattur, Vellore District.

2. The appellant is the claimant in M.C.O.P.No.695 of 2005 on the file of the Motor Accidents Claims Tribunal cum Sub-Court, Tirupattur, Vellore District. He filed the above claim petition, claiming a sum of Rs.1,00,000/- as compensation for the injuries sustained by him in the accident that took place on 17.07.2005.



3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the Hero Honda motorcycle belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.45,000/- as compensation to the appellant/claimant, at the first instance and recover the same from the 1st respondent/owner of the Hero Honda motorcycle.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal for enhancement of compensation.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained abrasion over right side forehead 4 cm x 3 cm in size, abrasion over right knee joint 12 cm x 2 cm in size and continuous pain over right side chest. The P.W.2/Doctor-Ilangovan examined the appellant and certified that appellant suffered 25% disability and disability certificate was marked as Ex.P9. The Tribunal has awarded only a meagre sum of Rs.25,000/- towards disability, calculating at the rate of Rs.1,000/- per percentage of disability. The Tribunal ought to have awarded a sum of Rs.2,000/- per percentage of disability. Initially, the appellant was admitted at Thiruppathur Government Hospital, after first aid he was referred to Government Hospital, Vellore and taken treatment from 22.07.2005 to 26.07.2005, totally 5 days as inpatient and thereafter taken treatment as outpatient at private hospital. The appellant was doing Agricultural work and also milk vendor business during his leisure time and was earning a sum of Rs.3,000/- per month. Due to the injuries and disability suffered by him in the accident, he could not do the work as he was doing earlier. The Tribunal awarded a meagre sum towards loss of income. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per Contra, learned counsel appearing for the 2nd respondent-Insurance Company contended that the P.W.2/Doctor examined the appellant and certified that appellant suffered 25% disability. The Tribunal considering the disability certificate issued by Doctor, awarded a sum of Rs.25,000/- towards disability at the rate of Rs.1,000/- per percentage of disability and the same is not meagre. The appellant has not produced any material evidence to prove his avocation and income. In the absence of any material evidence with regard to



avocation and income, a sum of Rs.10,000/- per month fixed by the Tribunal as notional income of the appellant is excessive. The appellant has not suffered any functional disability and hence, he is not entitled to any compensation towards loss of earning capacity. The amounts awarded by the Tribunal under different heads are not meagre. 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 for the respondents and perused the materials available on record.

8. From the materials available on record, it is seen that according to the appellant, he was aged 60 years and was doing agricultural work and also a milk vendor and was earning a sum of Rs.3,000/- per month, but the appellant has not proved his avocation and income by producing any document. Hence, the Tribunal has awarded Rs.10,000/- towards loss of income. The appellant examined Dr. Ilangovan as P.W.2, who assessed the disability of the appellant at 25% and Ex.P9/disability certificate was marked to prove the same. Considering the P.W.2/Doctor and Ex.P9, the Tribunal accepted the same and awarded Rs.25,000/- by taking Rs.1,000/- per percentage of disability which is correct. The amount awarded by the Tribunal towards pain and sufferings, nutrition, attendant charges and transportation are meagre and the same are hereby enhanced to Rs.5,000/-, Rs.5,000/-, Rs.5,000/- and Rs.5,000/- respectively. The amounts awarded by the Tribunal under all the other heads are just and reasonable and 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.	Disability	25,000/-	25,000/-	Confirmed
2.	Pain & sufferings	1,000/-	5,000/-	Enhanced
3.	Nutrition	2,000/-	5,000/-	Enhanced
4.	Attendant charges	2,000/-	5,000/-	Enhanced
5.	Transportation	5,000/-	5,000/-	Confirmed



6.	Loss of income	10,000/-	10,000/-	Confirmed
	Total	45,000/-	55,000/-	Enhanced by Rs.10,000/-

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9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.45,000/- is hereby enhanced to Rs.55,000/- with interest at the rate of 7.5% 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 now determined by this Court. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court together 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 order to the credit of M.C.O.P.No.695 of 2005 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Tiruppathur, Vellore District, at the first instance and recover the same from the 1st respondent/owner of the Hero Honda motorcycle. 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 filing necessary applications before the Tribunal. No costs.

SD/-

ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

gbi

To

The Motor Accidents Claims Tribunal,
Sub-Judge,
Tiruppathur, Vellore District.

Copy to

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

C.M.A.No.1101 of 2018

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