IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.04.2021

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A. No.3564 of 2019

V.Deepak Kumar .. Appellant

Versus

1. Murugesan
2. M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
   4th Floor, Tirumalai Towers,
   723, Avinasi Salai,
   Coimbatore. ..Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 10.09.2018 made in MCOP.No.257 of 2011 on the file of the Motor Accident Claims Tribunal / Sub Court, Sankari.

For appellant : Mr. S. Viswanathan

For respondents : Mr. G. Vausdevan forR2
: R1 was set ex-parte before the Tribunal

J U D G M E N T
(The Judgment of the Court was delivered by R.Subbiah, J)

The appeal is heard through video conferencing.

2. Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal / Sub Court, Sankari, in MCOP.No.257 of 2011, the present appeal has been filed by the claimant for enhancement of the compensation amount.

3. It is the case of the appellant/claimant that on 14.03.2011 at about 6.40 pm, while he was proceeding in an un-registered two wheeler on the extreme left side of the Velur-

Tiruchengode Road, a Swaraj Mazda vehicle bearing registration No.TN 34 C 1145 belonging to the first respondent and insured with the second respondent, came in a rash and negligent manner being driven by its driver and dashed against the two wheeler. Due to the impact, the appellant/claimant sustained grievous injuries. Immediately, he was admitted in a Hospital, where he had undergone an operation and his right leg below the knee was amputated.

4. It is the further case of the appellant/claimant that at the time of the accident, he was pursuing Diploma in Mechanical Engineering and also working part time and earning a sum of Rs.10,000/- per month. Due to the accident, the appellant/claimant was completely disabled and could not continue his studies or continue his work as before. Hence, he made a claim for a sum of Rs.20,00,000/- as compensation.

5. Resisting the claim made by the appellant/claimant, the second respondent/Insurance Company filed a counter statement inter alia contending that the accident had not occurred in the manner as projected by the appellant/claimant. They have also denied the age, occupation and income of the appellant/claimant.

6. To prove the claim, before the Tribunal, the appellant/claimant examined himself as PW1 and marked Exs.P1 to P19. On the side of the Insurance Company, Investigating Officer was examined as RW1 and his report was marked as Ex.R1.

7. The Tribunal, after analysing the entire evidence, has come to the conclusion that the victim has suffered 85% permanent disability and passed an award for a sum of Rs.20,00,000/-. Such amount was directed to be paid by the Insurance Company. The break-up details of the amount awarded by the Tribunal under different heads are as follows:

S.No.	Heads under which amounts are awarded	Amounts in Rs.
1.	Loss of Earning Capacity	11,05,000
2.	Medical Expenses	6,65,000
3.	Pain and sufferings	65,000
4.	Transportation Expenses	20,000
5.	Nutrition and Nutritional Food	20,000
6.	Attendant Charges	20,000
7.	Simple Injury	75,000
8.	Future Medical Expenses	30,000
	Total	20,00,000

8. It is the submission of the learned counsel for the appellant/claimant that on account of the accident, right leg below the knee of the appellant/claimant was amputated. Hence, he could not continue his studies or undertake any employment for his livelihood. His marital life is also affected to a great extent. The pain and suffering, mental agony and physical discomfort undergone by the claimant is enormous. The Tribunal, without taking note of the above, has awarded a meager amount and it warrants enhancement.

9. It is the specific stand of the learned counsel for the appellant/ claimant that the Tribunal, by taking a very meagre amount of Rs.6,000/- per month as monthly income of the injured, awarded an inadequate compensation of Rs.11,05,000/- under the head "Loss of Earning Capacity". It is the contention of the learned counsel for the appellant/claimant that considering the cost of living prevalent at the time of the accident, at least a sum of Rs.15,000/- may be fixed as monthly income of the appellant/claimant and the amount under such head may be enhanced. That apart, the learned counsel further submitted that the amount awarded by the Tribunal under other heads are also on the lower side, and they require appropriate enhancement.

10. Per contra, the learned counsel for the Insurance Company made his submissions, supporting the award passed by the Tribunal.

11. As contended by the learned counsel for the appellant/claimant, on account of the said accident, right leg below the knee of the appellant/claimant was amputated. The appellant suffered such injury at his prime age. Given the magnitude of the disability suffered by the claimant, we are of the opinion that the appellant/claimant could not carry on any avocation throughout his life.

12. The accident had taken place in the year 2011. Considering the cost of living prevalent at the time of the accident, the sum of Rs.6,000/- fixed as monthly notional income of the appellant/claimant is extremely on the lower side, which resulted in awarding inadequate compensation. Hence, the notional income of the appellant/claimant is fixed at Rs.12,000/- per month, which would meet the ends of justice. Thus, if a sum of Rs.12,000/- is taken as monthly income of the appellant/claimant, the annual loss of income comes to Rs.1,44,000/- [12,000 x 12]. Considering the age of the appellant/claimant at the time of the accident being 18, if multiplier "18" is applied, the amount comes to Rs.25,92,000/- [1,44,000 x 18] which will be the fair and reasonable amount towards "Loss of Earning Capacity" payable to the claimant.

Thus, the sum of Rs.11,05,000/- awarded by the Tribunal under the head "Loss of Earning Capacity" is hereby enhanced to Rs.22,03,200/-.

13. Further, the Tribunal has not awarded any amount under the head "Loss of Amenities". Considering the fact that after the accident, it is difficult for the appellant/claimant to carry out his day-to-day affairs, a sum of Rs.2,00,000/- is hereby awarded under such head.

14. The sum of Rs.30,000/- awarded by the Tribunal under the head "Future Medical Expenses" appears to be low and hence, the same is enhanced to Rs.1,00,000/-.

15. The amounts awarded by the Tribunal under all the other heads are just and fair and hence, the same are confirmed.

16. The total compensation is re-determined as follows:

S. No.	Heads under which amounts are awarded	Amounts awarded by the Tribunal in Rs.	Amounts awarded by this Court in Rs.
1.	Loss of Earning Capacity	11,05,000	22,03,200
2.	Medical Expenses	6,65,000	6,65,000
3.	Pain and sufferings	65,000	65,000
4.	Transportation Expenses	20,000	20,000
5.	Nutrition and Nutritional Food	20,000	20,000
6.	Attendant Charges	20,000	20,000
7.	Simple Injury	75,000	75,000
8.	Future Medical Expenses	30,000	1,00,000
9.	Loss of Amenities	-	2,00,000
	Total	20,00,000	33,68,200

17. The total compensation of Rs.20,00,000/- awarded by the Tribunal is hereby enhanced to Rs.33,68,200/-, which shall carry interest at 7.5% from the date of claim petition till the date of payment. The Insurance Company is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw

the entire amount. The claimant shall pay necessary Court fee, on the enhanced compensation. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Motor Accident Claims Tribunal,
   Sub Court, Sankari

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

+1cc to Mr.G. Vasudevan, Advocate, S.R.No.25277

C.M.A. No.3564 of 2019

AKII(CO)
BE(27/07/2021)