



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1796 of 2019

Baskaran

...Appellant/Claimant

Vs.

1. Sangili

2. The New India Assurance Company Limited,
By-pass road,
Dharmapuri 636 701.

...Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.10.2018 made in M.C.O.P.No.610 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Dharmapuri.

For Appellant : Mr.D.Ramesh Kumar

For R1 : No appearance

For R2 : Mr.S.Dhakshnamoorthy

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 24.10.2018 made in M.C.O.P.No.610 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Dharmapuri.

3.The appellant is the claimant in M.C.O.P.No.610 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Dharmapuri. He filed the above said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.06.2016.



4.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 lorry owned by the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.18,99,009/- as compensation to the appellant.

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

6.The learned counsel appearing for the appellant contended that the appellant lost his entire earning capacity and the Medical Board constituted by the Dharmapuri Government Medical College Hospital, Dharmapuri examined the appellant and certified that the appellant suffered 85% partial permanent disability and issued Ex.P22/disability certificate to that effect. The right leg below knee of the appellant was amputated and he lost his entire earning capacity. The Tribunal ought to have awarded compensation for 100% loss of earning capacity instead of 85%. At the time of accident, he was working as a Tailor in full time and was also doing Mobile Phone Service in part-time and was earning a sum of Rs.25,000/- per month. He has marked Ex.P7 - salary certificate pertaining to the years 2013 and 2014 at Rs.12,000/- per month. The Tribunal ought to have seen that appellant would have earned more income on the date of accident. The appellant filed Ex.P12 - certificate for completion of Technical Training for doing Mobile Service, which proves that the appellant was a trained Mobile Phone Service Engineer. Due to the amputation in the right leg below knee, he lost his entire avocation. For the injuries sustained in the accident, right leg of the appellant below knee was amputated and steel plate was fixed. The appellant also suffered fracture in right hand and surgery was conducted by fixing plates. Hence, the Tribunal ought to have awarded compensation towards future medical expenses. The Tribunal failed to award any amount for loss of income, future medical expenses, loss of marital prospects and loss of amenities. The Tribunal without considering Exs.P7 and P12, fixed only a meagre sum of Rs.8,000/- per month as notional income. The amounts awarded by the Tribunal towards pain and sufferings, transportation, extra nourishment and attendant charges are meagre and prayed for enhancement of the compensation.

7.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

8.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the materials placed before it, nature of injuries,

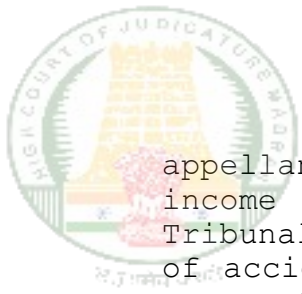


treatment taken, disability awarded compensation under different heads. The Tribunal accepted the disability certificate issued by the Medical Board and awarded a sum of Rs.13,05,600/- for 85% loss of earning capacity by adopting multiplier method and the same is not meagre. The appellant has not produced 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.8,000/- per month fixed by the Tribunal as notional income of the appellant is excessive. 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.

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 entire materials on record.

10. It is the case of the appellant that in the accident he suffered major crush injury of right lower limb, both bone tibial condylar fracture and multiple injuries all over the body 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 contention of the learned counsel appearing for the appellant that the appellant lost his entire earning capacity and the Medical Board constituted by the Dharmapuri Government Medical College Hospital, Dharmapuri examined the appellant and certified that the appellant suffered 85% partial permanent disability and issued disability certificate Ex.P22 to that effect. The appellant has not let in any evidence to show that he cannot do any work as he was doing earlier and has not examined any Doctor to prove that he cannot do any work. The Tribunal in the absence of any evidence, accepted the disability of the appellant at 85% issued by the Medical Board constituted by the Dharmapuri Government Medical College Hospital, Dharmapuri and adopted multiplier method for awarding compensation for loss of earning capacity.

11. It is the further case of the appellant that at the time of accident he was aged 31 years working as Tailor in full time and also doing part time Mobile Phone Technician and was earning a sum of Rs.25,000/- per month. To prove the avocation and income, the appellant produced and marked the Salary Certificate and the Lifetime Membership Card issued by the Tamil Nadu Tailors Welfare Association as Exs.P7 & P8 respectively. From Ex.P7, it is seen that the appellant was receiving a sum of Rs.12,000/- per month as salary for the year 2013 & 2014 by working in a Cellphone shop. The accident is of the year 2016 and the



appellant has not filed any acceptable evidence to prove his income as Part Time Mobile Phone Technician and as Tailor. The Tribunal considering the deposition of appellant that at the time of accident he was working as Tailor, fixed a sum of Rs.8,000/- per month as notional income of the appellant. The accident is of the year 2016. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Hence, a sum of Rs.12,000/- per month is fixed as notional income of the deceased. The deceased was aged 31 years at the time of accident. The Tribunal, following the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another], rightly applied multiplier '16'. Thus, by fixing the monthly income of the appellant at Rs.12,000/- per month, the amount awarded by the Tribunal towards loss of earning capacity is modified to Rs.19,58,400/- [Rs.12,000/- X 12 X 16 X 85/100]. From the award passed by the Tribunal, it is seen that the appellant has taken treatment at Deepa Hospital, Tirupur as inpatient for 19 days from 15.06.2016 to 03.07.2016. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards attendant charges and extra nourishment are meagre and hence, the same are enhanced to Rs.25,000/- each. The Tribunal has not awarded any amount towards loss of amenities. Considering the nature of injuries and disability suffered by the appellant, this Court is of the view that he would have suffered inconvenience and would be facing discomfort in his life. Therefore, the appellant is entitled to a sum of Rs.25,000/- towards loss of amenities. 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.	Fixation of artificial leg	2,47,894/-	2,47,894/-	Confirmed
2.	Loss of earning capacity	13,05,600/-	19,58,400/-	Enhanced
3.	Pain and sufferings	50,000/-	50,000/-	Confirmed
4.	Extra nourishment and damages to clothes	20,000/-	25,000/-	Enhanced



5.	Transportation	15,000/-	15,000/-	Confirmed
6.	Attendant charges	15,000/-	25,000/-	Enhanced
7.	Medical expenses	2,45,515/-	2,45,515/-	Confirmed
8.	Loss of amenities	-	25,000/-	Granted
	Total	Rs.18,99,009/-	Rs.25,91,809/-	Enhanced by Rs.6,92,800/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.18,99,009/- is hereby enhanced to Rs.25,91,809/- 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.610 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Dharmapuri. 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/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Dharmapuri.

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

+2ccs to Mr.D.Ramesh Kumar, Advocate, S.R.No.16761
+1cc to Mr.S.Dhakshnamoorthy, Advocate, S.R.No.16840

C.M.A.No.1796 of 2019

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NSK 21/10/2021