



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.12.2021

CORAM:

HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1584 of 2018

Manikandan

..Appellant/Petitioner

Vs.

1.Saraswathi

2.United India Insurance Co.,Ltd.,
Shanmuga Complex,
1-15, 24-H, 1st Floor,
New Edappadi Road,
Sankari
(Notice to R1 may be dispensed with)

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 04.01.2018 made in M.C.O.P.No.713 of 2014 on the file of Motor Accidents Claims Tribunal, Principal District Court, Namakkal.

For Appellant	: Mr.C.Paraneedharan
For R2	: Mr.C.Paranthaman
For R1	: Ex-parte

JUDGMENT

The Civil Miscellaneous Appeal is filed by the claimant seeking enhancement of compensation granted by the Tribunal in the award dated 04.01.2018 made in M.C.O.P.No.713 of 2014 on the file of Motor Accidents Claims Tribunal, Principal District Court, Namakkal.

2.The appellant is the claimant in M.C.O.P.No.713 of 2014 on the file of Motor Accidents Claims Tribunal, Principal District Court, Namakkal. He filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.03.2014.



3.The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to rash and negligent driving by the driver of the ACE CLE vehicle belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.1,40,684/- as compensation to the appellant/claimant, at the first instance and recover the same from the 1st respondent/owner of the ACE CLE vehicle.

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

The brief facts relate to this appeal are as follows:

5.On 15.03.2014, at about 5.30 p.m., when the appellant/claimant was riding in a Bajaj motorcycle bearing Registration No.TN-34-8669 as pillion rider, driven by his friend, near Sembampalayam Bus stop, on the left side of the Salem to Tiruchengode main road, from north towards south direction, the driver of the ACE CLE 275 vehicle bearing Registration No.TN-34-J-8685, who was driving the said vehicle in a rash and negligent manner with high speed and without blowing horn from the opposite direction, hit against the Bajaj motorcycle. Due to the said accident, the claimant sustained three fractures in his thigh, three grievous injuries on his head and injuries in his left hand and all over his body and therefore, he was admitted in Thiru Kumaran Hospital, Tiruchengode, where he took treatment as inpatient for one month and now, he is undergoing treatment as outpatient. The accident was only due to rash and negligent driving by the driver of the ACE CLE vehicle and therefore, the appellant/claimant filed the claim petition in M.C.O.P.No.713 of 2014 on the file of Motor Accidents Claims Tribunal, Principal District Court, Namakkal. On enquiry and after appreciation of the evidence, the Tribunal passed the award granting a sum of Rs.1,40,684/- as compensation to the appellant/claimant.

6.In the appeal, it has been stated that the claimant had sustained three fractures in his thigh, three grievous injuries on his head and injuries in his left hand and all over his body and underwent a surgery fitting plate and screws for the fractures. But the Tribunal, without considering the evidence adduced by the injured/claimant, assessed the disability at 35%, which is not in consonance with the nature of injuries suffered.



The Tribunal ought to have awarded compensation by applying multiplier method as the injury sustained by the appellant in his head had severely affected his avocation as Powerloom worker. The Tribunal failed to calculate the loss of income during the period of treatment and other head, such as pain and sufferings. The Tribunal had not awarded any amount towards attendant charges and transportation. The Tribunal had granted Rs.2,000/- 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.Mr.C.Paraneedharan, learned counsel for the appellant, submits that the Motor Accidents Claims Tribunal, Principal District Court, Namakkal failed to invoke the multiplier method for awarding compensation. The Tribunal had applied the percentage method which had resulted in miscarriage of justice to the claimant. The evidence let in by the claimant as P.W.1 and the Doctor's evidence as P.W.3 had been ignored by the Tribunal. Therefore, the learned counsel for the appellant seeks enhancement of the award amount.

8.Mr.C.Paranthaman, learned counsel appearing for the 2nd respondent/Insurance Company submits that the Tribunal is right in adopting percentage method in this case and that the 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 Tribunal had rightly assessed the disability at 35%. In any event, the Tribunal had awarded Rs.2,000/- per percentage of disability, which is a reasonable award and therefore, 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 to the enhancement of compensation as prayed for?

POINT:

11.The contention of the learned counsel appearing for the appellant is that in the accident, the appellant sustained



three fractures in his thigh, three grievous injuries on his head and injuries in his left hand and all over his body and in the surgery, plate and screws were fitted. The P.W.3/Doctor certified that the appellant suffered 35% of disability, as per Ex.P21 (Dated 06.04.2013) - Disability Certificate issued by P.W.3/Doctor. Based on this, the percentage method adopted by the Tribunal is proper. The accident is of the year 2014 and the Tribunal had granted only a sum of Rs.2,000/- per percentage of disability. Considering the year of accident, the appellant is entitled to compensation at the rate of Rs.3,500/- per percentage of disability. Thus, the amount awarded by the Tribunal towards permanent disability is enhanced to Rs.1,22,500/- (Rs.3,500/- X 35% of disability).

12.It is the contention of the appellant/claimant that at the time of accident, he was working as Power loom worker and was earning a sum of Rs.30,000/- per month. The 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.6,000/- is fixed as monthly income of the appellant. Thus, the compensation granted by this Court towards 'loss of income' is Rs.18,000/- (Rs.6,000/- X 3 months). The Tribunal has awarded a sum of Rs.5,000/- towards pain and suffering which is meagre. Hence, a sum of Rs.15,000/- towards pain and sufferings is hereby awarded. The Tribunal has not awarded any amount towards attendant charges and transportation and therefore, a sum of Rs.3,000/- and Rs.2,000/- are hereby awarded towards attendant charges and transportation. 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.	Disability	70,000/-	1,22,500/-	Enhanced
2.	Medical expenses	63,684/-	63,684/-	Confirmed
3.	Pain & sufferings	5,000/-	15,000/-	Enhanced
4.	Nutrition	2,000/-	2,000/-	Confirmed
5.	Loss of income	-	18,000/-	Granted



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6	Attendant charges	-	3,000/-	Granted
7	Transportation	-	2,000/-	Granted
	Total	Rs.1,40,684/-	Rs.2,26,184/-	Enhanced by Rs.85,500/-

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.1,40,684/- is hereby enhanced to Rs.2,26,184/- together 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. 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.713 of 2014 on the file of Motor Accidents Claims Tribunal, Principal District Court, Namakkal, 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

//True copy//

Sub Assistant Registrar

gbi

To

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

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



+1 CC to Mr.C.Paraneedharan, Advocate sr 65190.

+2 Ccs to Mr.T.S. Arthanareeswaran, Advocate sr 66041

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C.M.A.No.1584 of 2018

RGN(CO)
SP(07/03/2022)