



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

C.M.A.No.1919 of 2021

Rajkumar

...Appellant

Vs.

1.Premavathi

2.United India Insurance Company Limited,
No.104-A, Ranga Building,
Perumanur Main Road,
Near Four Roads, Salem District,
Branch Office: 146N, Kumar Complex,
Annasalai, Tiruchengode Town & Taluk,
Namakkal District - 11

...Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.02.2020 made in M.C.O.P.No.227 of 2015 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : No appearance for R1
Ms.I.Malar Ravichandran for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 21.02.2020 made in M.C.O.P.No.227 of 2015 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Tiruchengode.

2. The appellant is the claimant in M.C.O.P.No.227 of 2015 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Tiruchengode. 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 24.07.2015.



3. According to the appellant, on 24.07.2015 at about 05.50 hours, while the claimant was riding the motorcycle bearing Registration No.TN 28 BZ 1629 (TVS Sport Motor Cycle) from Tiruchengode to Salem main road from North to South direction near Kailasapalayam Water Tank at that time, the driver of a private bus bearing Registration No.TN 30 AX 1200 (Ashok Leyland S.N.B. Bus) Salem to Tiruchengcode, drove the bus without observing the Road Traffic Rules in a rash and negligent manner from South to North direction and dashed against the motorcycle rode by the claimant and caused the accident. In the accident, the claimant fell down from the motorcycle and sustained multiple grievous injuries all over his body. Therefore, he filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him.

4. The 1st respondent- driver of the bus remained exparte before the Tribunal.

5. Before the Tribunal, the appellant examined himself as P.W.1 and one John Kurupatham was examined as P.W.2 and 9 documents were marked as Exs.P1 to P9. The 2nd respondent-Insurance Company did not let in any oral and documentary evidence.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the driver of the bus belonging to the 1st respondent and awarded a sum of Rs.4,30,900/- as compensation and directed the 2nd respondent-Insurance Company, being the insurer of the bus to pay a sum of Rs.4,30,900/- towards the award amount as compensation to the appellant.

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

8. The learned counsel appearing for the appellant contended that the appellant was working as a Sculpture and was earning a sum of Rs.20,000/- per month. In the accident, the appellant sustained grievous injuries and fractures (Degloving Injury in left Thigh & Knee and closed fracture lateral Tibial condyle left side with extension to diaphysis). He took treatment as inpatient from 24.07.2015 to 04.08.2015 and underwent surgery. Again, he was admitted in the hospital as an inpatient from 11.09.2015 to 07.10.2015. The Tribunal having held that appellant suffered 25% loss of earning capacity, erred in granting compensation by percentage method. The Tribunal ought to have awarded a sum of Rs.4,000/- per percentage for 25% of disability as assessed by Doctor. The Tribunal has



erroneously fixed a meagre sum of Rs.8,000/- per month as notional income of the appellant. The amount awarded by the Tribunal towards pain and sufferings, transportation, extra nourishment and loss of income are meagre. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation.

9. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal accepted Ex.P5/disability certificate issued by the Namakkal Government Hospital and awarded a sum of Rs.75,000/- for 25% disability at the rate of Rs.3,000/- per percentage of disability and the same is not meagre. 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 and prayed for dismissal of the appeal.

10. 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.

11. From the materials available on record, it is seen that in the accident, the appellant suffered grievous injuries and fractures (Degloving Injury in left Thigh & Knee and closed fracture lateral Tibial condyle left side with extension to diaphysis). To prove the nature of injuries and disability suffered by the appellant, he examined himself as P.W.1 and filed Exs.P3 to P6 to that effect. The Doctors from Namakkal Government Hospital, Namakkal examined the appellant and certified that appellant suffered 25% disability and issued Ex.P5/disability certificate to that effect. The Tribunal accepted Ex.P5/disability certificate issued by the Namakkal Government Hospital, Namakkal and awarded a sum of Rs.75,000/- for 25% disability at the rate of Rs.3,000/- per percentage of disability. This Court by the judgment reported in 2020 (1) TN MAC 617 [M. Chinnathambi Vs. S.Deepa and another], fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred in the year 2016 onwards, due to rise in cost of living. In the present case, the accident was of the year 2015. In view of the same, a sum of Rs.4,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,00,000/- (Rs.4,000/- X 25% disability). The appellant has not proved that he suffered functional disability and lost his earning capacity. Hence, he is not entitled to any amount towards loss of earning capacity by adopting multiplier method. The Tribunal failed to award any amount towards future medical expenses and the amount awarded under pain and suffering is



meagre. 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	75,000/-	1,00,000/-	Enhanced
2.	Pain and sufferings	35,000/-	50,000/-	Enhanced
3.	Loss of amenities	30,000/-	30,000/-	Confirmed
4.	Extra nourishment	15,000/-	15,000/-	Confirmed
5.	Transportation	15,000/-	15,000/-	Confirmed
6.	Medical Bill expenses	1,98,900/-	1,98,900/-	Confirmed
7.	Attendant charges	30,000/-	30,000/-	Confirmed
8.	Loss of income	32,000/-	32,000/-	Confirmed
9.	Future medical expenses		15,000/-	Granted
	Total	Rs.4,30,900/-	Rs.4,85,900/-	enhanced by Rs.55,000/-

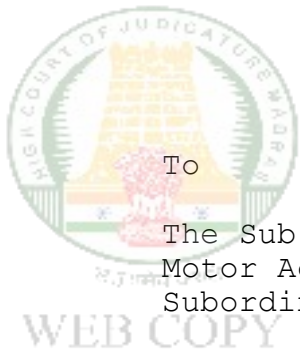
12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,30,900/- is hereby enhanced to Rs.4,85,900/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the 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.227 of 2015 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode. 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 making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

dpq



To

The Sub Judge,
Motor Accident Claims Tribunal,
Subordinate Court, Tiruchengode.

C.M.A.No.1919 of 2021

SVI (CO)
RVM(22/03/2022)