



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3730 of 2019

S.Gnanavel ... Appellant/Petitioner

Vs.

1.C.Sadasivan
2.S.P.Loganathan
3.SBI General Insurance Company Limited,
No.104, 2nd Floor,
Excellence Building,
Rase House, Coimbatore - 18. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the fair and decreetal order dated 21.11.2017 passed in M.C.O.P.No.1003 of 2013 by the Motor Accident Claims Tribunal, (I Additional District Court), Tiruppur.

For Appellant : Mr.S.Kaithamalai Kumaran

For Respondents: Mr.M.B.Raghavan for
M/s.M.B.Gopalan Associates for R3

R1 & R2-No appearance

JUDGMENT

The appellant is the claimant in this appeal before the Motor Accidents Claims Tribunal, (I Additional District Court), Tiruppur in M.C.O.P.No.1003 of 2013 and is aggrieved by the impugned judgment and decree dated 21.11.2017 and has filed the present appeal for enhancement of compensation.

2.By the impugned Judgment and decree, the Tribunal has awarded a sum of Rs.3,60,000/- as compensation for the injuries suffered by the appellant has detailed below:-

Particulars	Rs.
Disability	Rs.1,05,000/-
Pain and suffering	Rs. 25,000/-



WEB COPY

Medical expenses as per Bill (Ex.P.10)	Rs.2,00,000/-
Attendant Charges	Rs. 10,000/-
Transport Expenses	Rs. 10,000/-
Nutrition	Rs. 10,000/-
Total	Rs.3,60,000/-

3.The learned counsel for the appellant submits that the evidence on record namely the deposition of P.W.2 and Ex.P.13 permanent disability clearly brings out the nature of injury suffered by the appellant and the extent of Permanent disability.

4.It is submitted that the Tribunal ought not to have reduced the permanent disability to 35% from 47.69% assessed by the P.W.2 in Ex.P.13. He therefore prays for enhancement of compensation. He further submits that the appellant by avocation was a driver and therefore the Tribunal ought to have applied multiplier as per the decision of the Hon'ble Supreme Court in Raj Kumar Vs Ajay Kumar and another, (2011) 1 SCC 343.

5.The learned counsel for the appellant further submits that the Tribunal has also not awarded any amount towards loss of income and other conventional heads.

6.Defending the impugned judgment and decree, the learned counsel for the 3rd respondent/Insurance Company submits that the impugned judgment and decree is well reasoned and requires no interference. He further submits that P.W.2 was not the decision who gave the treatment to the appellant and therefore the assessment of permanent disability at 47.69% was exaggerated and therefore the Tribunal has rightly restricted the permanent disability at 35% has awarded a sum of Rs.1,05,000/- towards disability. He therefore submits that the appeal filed by the appellant is liable to be dismissed.

7.Heard the learned counsel for the appellant and the respondent.

8.The evidence on record indicates the nature of injuries suffered by the appellant. Ex.P.13 marked through the P.W.2 indicates that the appellant had suffered partial permanent disability at 47.69%. The nature of injuries suffered by the appellant indicates that the injuries which was serious in nature in as much as the appellant has suffered following injuries:-

- 1.Fracture on right humerus
- 2.Fractures on left femur, patella
- 3.Fracture on left ankle
- 4.Deformity swelling Right Forearm



9. Though the expert has been examined who stated that the nature of injuries of the appellant resulted in partial permanent disability, there is no determination of functional disability due to the injuries suffered by the appellant to apply multiplier. This is not a fit case for applying multiplier. At the same time, the compensation awarded by the Tribunal for the injuries suffered by the appellant appears to be meagre as no amount has been awarded towards loss of income by considering a notional monthly income of the appellant as RS.7,000/-. Therefore, the amount awarded by the Tribunal is slightly enhanced and re-computed as follows:-

Particulars	Rs.
Disability (3000X47.69)	Rs.1,43,070/-
Pain and suffering	Rs. 25,000/-
Medical expenses as per Bill (Ex.P.10)	Rs. 2,00,000/-
Attendant Charges	Rs. 10,000/-
Transport Expenses	Rs. 10,000/-
Nutrition	Rs. 10,000/-
Loss of Income (7000X6)	Rs. 42,000/-
Loss of Amenities	Rs. 10,000/-
Total	Rs. 4,50,070/-

10. The 3rd respondent/Insurance Company is therefore directed to deposit enhancement of compensation of Rs.4,50,070/- together with interest at 7.5% per annum from the date of numbering of the claim petition till the date of such deposit, less any amount already deposited by it, within a period of six weeks from the date of receipt of a copy of this Judgment.

11. On such deposit being made by the 3rd respondent/Insurance Company, the appellant/claimant is permitted to withdraw the same together with interest accrued thereon, less any amount already withdrawn in the same proportion as was ordered by the Tribunal.



12. Accordingly, this appeal stands partly allowed in terms of above observations. No costs.

WEB COPY

Sd/-

Assistant Registrar(SSA)

//True Copy//

Sub Assistant Registrar

jas

To:

1.The Motor Accident Claim Tribunal,
(I Additional District Court), Tiruppur.

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

+1cc to M/s.S.Kaithamalai Kumaran, Advocate Sr.23321

C.M.A.No.3730 of 2019

rr[col]
srg 29/10/2021