



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2113 of 2014

Sakthivel

.. Appellant/Petitioner

Vs.

1.Panneer Selvam

2.Divisional Manager,

National Insurance Co. Ltd.,

No.19, Officer's Line,

Vellore.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.09.2012, made in M.C.O.P. No.180 of 2011, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Thiruvannamalai.

For Appellant : Mr.F.Terry Chella Raja
for M/s.M.Malar

For Respondents : No appearance

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode")

This appeal has been filed for enhancement of compensation granted by the award dated 12.09.2012, made in M.C.O.P. No.180 of 2011, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Thiruvannamalai.

2.The appellant-claimant filed M.C.O.P. No.180 of 2011, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Thiruvannamalai, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 14.06.2010.



3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the Mini Lorry owned by the 1st respondent and directed the respondents 1 and 2 as owner and insurer of the offending vehicle, to jointly and severally pay a sum of Rs.2,05,600/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 12.09.2012, made in M.C.O.P. No.180 of 2011, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained injuries like fracture of both bones in the right leg, crush injury with skin loss at right sole and multiple injuries all over the body. For the injuries sustained, he took treatment at Thirukovilur Government Hospital and at MIOT Hospital from 14.06.2010 to 23.06.2010 and underwent surgeries on 15.06.2010 and 17.06.2010. P.W.2 Doctor who examined the appellant, deposed that the appellant suffered 35% permanent disability and issued disability certificate, which was marked as Ex.P10. P.W.2 Doctor deposed that movements are restricted for the appellant, he is limping while walking and is finding difficult to squat and sit. The Tribunal considering the same, ought to have adopted the multiplier method. At the time of accident, the appellant was a cattle broker and was an Agricultural coolie, earning a sum of Rs.8,000/- per month. The Tribunal failed to award any amount towards loss of income, attendant charges, damage to clothes and mental agony. The amounts awarded by the Tribunal towards transportation, extra nourishment, medical expenses and loss of amenities are meagre and prayed for enhancement of the compensation.

6.Though notice has been served on the respondents and their names are printed in the cause list, there is no representation for them either in person or through counsel.

7.Heard the learned counsel appearing for the appellant and perused the materials available on record.

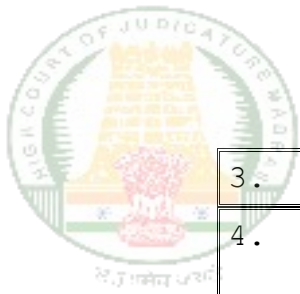
8.From the materials on record, it is seen that it is the case of the appellant that in the accident, he sustained injuries like fracture of both bones in the right leg, crush injury with skin loss at right sole and multiple injuries all over the body and initially, took treatment at Thirukovilur Government Hospital and at MIOT Hospital from 14.06.2010 to



23.06.2010. He underwent two surgeries on 15.06.2010 and 17.06.2010 for wound debridement and split skin grafting with below knee POP slab application. Considering the deposition of P.W.2 Doctor who examined the appellant and certified that the appellant suffered 35% disability, the Tribunal awarded a meagre sum of Rs.70,000/- towards disability at the rate of Rs.2,000/- per percentage. The accident is of the year 2010. Considering the year of accident, the appellant is entitled to Rs.3,000/- per percentage for 35% disability. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.1,05,000/- [Rs.3,000/- x 35%]. The Tribunal failed to award any amount towards attendant charges. Considering the period of treatment taken by the appellant, a sum of Rs.10,000/- is awarded towards attendant charges. In view of the injuries sustained in the accident, the amount of Rs.3,000/- awarded by the Tribunal towards extra nourishment is meagre and hence, the same is enhanced to Rs.10,000/-. The Tribunal failed to award any amount towards damage to clothes. Hence, a sum of Rs.1,000/- is awarded towards the same.

9.It is the contention of the appellant that at the time of accident, he was a cattle broker and was also an agricultural coolie, earning a sum of Rs.8,000/- per month. He did not file any document to prove his avocation and income. In the absence of any oral and documentary evidence, considering the nature of work done by the appellant and year of accident, a sum of Rs.8,000/- is fixed as his notional income. The Tribunal failed to award any amount towards loss of income. Due to the injuries sustained in the accident, the appellant would not have worked atleast for a period of three months. Hence, a sum of Rs.24,000/- [Rs.8,000/- x 3 months] is awarded towards loss of income for three months. 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.	Pain and sufferings	25,000/-	25,000/-	Confirmed
2.	Extra nourishment	3,000/-	10,000/-	Enhanced



WEB COPY

3.	Disability	70,000/-	1,05,000/-	Enhanced
4.	Loss of amenities	10,000/-	10,000/-	Confirmed
5.	Transportation	10,911/-	10,911/-	Confirmed
6.	Medical expenses	86,591/-	86,591/-	Confirmed
7.	Damage to clothes	-	1,000/-	Granted
8.	Attendant charges	-	10,000/-	Granted
9.	Loss of income	-	24,000/-	Granted
	Total	2,05,502/- rounded off to 2,05,600/-	2,82,502/- rounded off to 2,82,600/-	Enhanced by Rs.77,000 /-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.2,05,600/- is enhanced to Rs.2,82,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally directed to deposit the award amount, now determined by this Court, along with interest and costs, 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.180 of 2011. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Gsa

To

1. The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal),
Thiruvannamalai.



Copy To

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

+1cc to Mr.M.Malar, Advocate SR.No.65588

C.M.A.No.2113 of 2014

AJS(CO)
GN(07/02/2022)