



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.2122 of 2014

Padmanabhan

.. Appellant/Petitioner

Vs.

1.Palanisamy

2.The Branch Manager,
National Insurance Company Limited,
Jerom Building First Floor,
Port Station Road,
Trichy - 2.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.06.2013 made in M.C.O.P.No.598 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Perambalur.

For Appellant : Mr.P.Mani
For R2 : Mrs.N.B.Surekha
For R1 : No Appearance

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 28.06.2013 made in M.C.O.P.No.598 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Perambalur.

3.The appellant is the claimant in M.C.O.P.No.598 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Perambalur. He filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.04.2011.

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 tractor belonging to the 1st respondent and directed the 2nd respondent-



Insurance Company to pay a sum of Rs.4,79,195/- 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 in the accident the appellant suffered multiple grievous injuries all over the body. P.W.2/Doctor examined the appellant and certified that the appellant suffered 60% disability and issued Ex.P10/disability certificate to that effect. The Tribunal awarded a meagre sum of Rs.87,000/- towards disability at the rate of Rs.1,500/- per percentage of disability. Due to the injuries sustained by the appellant in the accident, he lost his earning capacity. The Tribunal ought to have adopted multiplier method for awarding compensation for loss of earning capacity. At the time of accident, the appellant was aged 24 years was working as a Agricultural Worker and was earning a sum of Rs.10,000/- per month. But the Tribunal awarded a meagre sum of Rs.10,000/- towards loss of income to the appellant. Due to the injuries sustained by the appellant, he could not continue his work as he was doing earlier. The Tribunal ought to have awarded more compensation for loss of income. The appellant has taken treatment in the KMC Hospital, Trichy as inpatient for 27 days from 07.04.2011 to 03.05.2011. The Tribunal has not awarded any amounts towards attender charges and loss of amenities and prayed for enhancement of compensation.

7. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal accepted the disability certificate issued by P.W.2/Doctor and awarded a sum of Rs.87,000/- for 58% disability at the rate of Rs.1,500/- per percentage of disability and the same is not meagre. The appellant has not produced any material evidence to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal awarded a sum of Rs.10,000/- towards loss of income, which 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. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

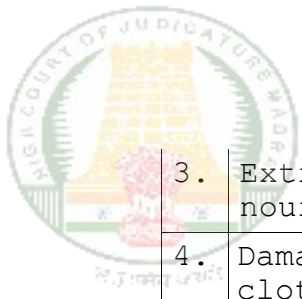
8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.



9. From the materials available on record, it is seen that it is the case of the appellant that in the accident he sustained multiple grievous injuries all over the body. P.W.2/Doctor examined the appellant and certified that appellant suffered 60% disability and issued Ex.P10/disability certificate to that effect. The Tribunal reduced the percentage of disability from 60% to 58% on the ground that P.W.2/Doctor has not assessed the percentage of disability for the whole body and he is not the Doctor who treated the appellant. P.W.2/Doctor has not produced the working sheet for arriving at the quantum of disability. The reason given by the Tribunal for reducing the percentage of disability from 60% to 58% is proper but a sum of Rs.1,500/- per percentage of disability awarded by the Tribunal is meagre. The accident is of the year 2011. A reasonable amount of Rs.3,500/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.2,03,000/- (Rs.3,500/- X 58% 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.

10. It is the contention of the appellant that at the time of accident, he was working as an Agricultural Worker and was earning a sum of Rs.10,000/- per month. Except oral evidence, the appellant has not produced any material evidence to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal awarded a sum of Rs.10,000/- towards loss of income. The accident is of the year 2011. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Hence, a reasonable amount of Rs.30,000/- is enhanced towards loss of income. The appellant has taken treatment in the KMC Hospital, Trichy as inpatient for 27 days from 07.04.2011 to 03.05.2011. The Tribunal has not awarded any amounts towards attendant charges and loss of amenities. Considering the nature of injuries and period of treatment taken by the appellant, a reasonable amount of Rs.5,000/- is awarded towards attendant charges and Rs.15,000/- is awarded towards loss of amenities. 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.	Disability	87,000/-	2,03,000/-	Enhanced
2.	Pain and sufferings	30,000/-	30,000/-	Confirmed



3.	Extra nourishment	5,000/-	5,000/-	Confirmed
4.	Damages to clothes	2,000/-	2,000/-	Confirmed
5.	Medical expenses	3,19,995/-	3,19,995/-	Confirmed
6.	Transportation expenses	25,000/-	25,000/-	Confirmed
7.	Attendent charges	-	5,000/-	Granted
8.	Loss of amenities	-	15,000/-	Granted
9.	Loss of income	10,000/-	30,000/-	Enhanced
	Total	Rs.4,78,995/-	Rs.6,34,995/-	Enhanced by Rs.1,56,000/-
Though the total compensation comes to Rs.4,78,995/- the Tribunal has wrongly calculated the compensation as Rs.4,79,195/-.				

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,78,995/- is hereby enhanced to Rs.6,34,995/- 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.598 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Perambalur. 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/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mtl

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Perambalur.



Copy to:
The Section Officer,
VR Section, High Court,
Madras.

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+1cc to Mrs.N.B.Surekha, Advocate, S.R.No.31310

C.M.A.No.2122 of 2014

PM(CO)
CB(30/09/2021)