

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3713 of 2019

Suresh

... Appellant/Petitioner

Vs.

1.Mahalingam

(R1 was set exparte before the Tribunal)

2.ICICI Lombard General Insurance Co. Ltd.

No.140, Chottabhai centre

2nd and 3rd floor

Nungambakkam, Chennai-600 034. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.08.2018 made in M.A.C.T.O.P.No.7982 of 2013 on the file of Motor Accident Claims Tribunal, Special Sub Court No.1 dealing with MCOP cases, Small Causes Court, Chennai.

For Appellant : Mr.Muthu Visakan K.V.

For R2 : Mr.K.Poomalai

J U D G M E N T

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 10.08.2018 made in M.C.O.P.No.7982 of 2013 on the file of Motor Accident Claims Tribunal, Special Sub Court No.1 dealing with MCOP cases, Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.7982 of 2013 on the file of Motor Accident Claims Tribunal, Special Sub Court No.1 dealing with MCOP cases, Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.40,00,000/- as compensation for the injuries sustained by him in the accident that took place on 20.08.2013.

3.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 Bolero maxi truck belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said Bolero maxi truck to pay a sum of Rs.18,92,600/- as compensation to the appellant.

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

5.The learned counsel appearing for the appellant contended that in the accident, the appellant suffered fracture shaft of femur in right leg, lost hearing and grievous injuries all over the body. The appellant has taken treatment as in-patient at five different spells for 218 days i.e., in Rajiv Gandhi Government General Hospital, from 21.08.2013 to 27.11.2013, 28.02.2014 to 24.03.2014, 26.05.2015 to 10.08.2015 and then in Aysha Hospitals Private Limited, Kilpauk, from 10.12.2015 to 18.12.2015 and then in Sri Narayani Nursing Home, Perambur, from 27.07.2017 to 03.08.2017 and underwent surgeries. The Medical Board after examining the appellant certified that the appellant suffered 100% disability for total loss of hearing and 60% disability for non-union fracture of right femur. Due to the injuries, the appellant suffered shortening of leg and is limping. The appellant was aged 44 years at the time of accident and he lost his earning capacity. The Tribunal failed to grant enhancement towards future prospects for awarding compensation towards loss of earning capacity. The appellant was a prothithar by profession and was earning a sum of Rs.20,000/- to Rs.25,000/- per month. The Tribunal erroneously fixed a sum of Rs.10,000/- per month as notional income of the appellant. The Tribunal ought to have awarded compensation towards future medical expenses and loss of amenities. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant did not examine any Doctor to prove the disability. The Tribunal adopted multiplier method and granted compensation, which is excessive. The Total compensation awarded by the Tribunal is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. 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.

8. It is the case of the appellant that in the accident, he suffered disfigurement, shortening of leg and loss of hearing. The Medical Board after examining the appellant certified that the appellant suffered 100% disability for loss of hearing, 60% disability for fracture of right femur and issued Ex.C1/disability certificate. The appellant has taken treatment as in-patient at five different spells for 218 days in five years i.e., in Rajiv Gandhi Government General Hospital, from 21.08.2013 to 27.11.2013, 28.02.2014 to 24.03.2014, 26.05.2015 to 10.08.2015 and then in Aysha Hospitals Private Limited, Kilpauk, from 10.12.2015 to 18.12.2015 and then in Sri Narayani Nursing Home, Perambur, from 27.07.2017 to 03.08.2017. The Tribunal fixed the disability of the appellant at 93% by applying formula. The 2nd respondent/Insurance Company did not let in any contra evidence to the disability certificate issued by the Medical Board. The Tribunal considering the nature of injuries, disability and period of treatment taken by the appellant, adopted multiplier method to award compensation towards pecuniary loss and the same is proper. The appellant claimed that he was a prothithar by profession and was earning a sum of Rs.20,000/- to Rs.25,000/- per month. The appellant has not filed any document to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.10,000/- per month as notional income of the appellant. The accident is of the year 2013 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.13,000/- per month is fixed as notional income of the appellant. Thus, the compensation awarded by the Tribunal towards pecuniary loss is modified to Rs.18,86,040/- (Rs.13,000/- X 12 X 13 X 93/100). The amounts awarded by the Tribunal towards transportation, extra nourishment and attendant charges are meagre. Considering the nature of injuries, disability and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards transportation, extra nourishment and attendant charges are hereby enhanced to Rs.30,000/-, Rs.75,000/- and Rs.1,00,000/- respectively. The Tribunal has not awarded any compensation towards loss of amenities. The appellant suffered shortening of leg and is limping. Hence, a sum of Rs.50,000/- is awarded towards loss of amenities. The appellant has not produced any document to prove that he is still taking treatment and therefore, he is not entitled to any compensation towards future medical expenses. The amounts awarded by the Tribunal under all 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 or reduced
1.	Pecuniary loss	14,50,800	18,86,040	Enhanced
2.	Pain and suffering	50,000	50,000	Confirmed
3.	Transportation	10,000	30,000	Enhanced
4.	Hospital and medical expenses	2,47,214	2,47,214	Confirmed
5.	Extra nourishment	30,000	75,000	Enhanced
6.	Attendant charges	54,500	1,00,000	Enhanced
7.	Loss of future prospects and disfigurement	50,000	50,000	Confirmed
8.	Loss of amenities	-	50,000	Granted
	Total	18,92,514 rounded off to 18,92,600	24,88,254 rounded off to 24,88,300	Enhanced by Rs.5,95,700 /-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.18,92,600/- is hereby enhanced to Rs.24,88,300/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.5,95,700/- enhanced by this Court as per the order of this Court dated 19.09.2019 made in C.M.P.No.19198 of 2019 in C.M.A.SR.No.92440 of 2019. 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. 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. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Subordinate Judge No.1
Motor Accident Claims Tribunal
Small Causes Court, Chennai.

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

+1cc to M/s.Poomalai, Advocate Sr.4193
+1cc to Mr.Muthuvisakan, Advocate Sr.4464

C.M.A.No.3713 of 2019

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srg 24/03/2021

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