



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1966 of 2020

Veeraiyan

...Appellant / Petitioner

Vs.

1.Veerajakan

2.The New India Assurance Co. Ltd.,
Coimbatore,
Rep. By its Branch Manager.

...Respondents / Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.01.2020, made in M.C.O.P. No.157 of 2017, on the file of the Sub Court, (Motor Accident Claims Tribunal) Nagapattinam.

For Appellant : Mr.K.Varadhakamaraj

For Respondents : Mr. J.Chandran (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of compensation granted by the award dated 08.01.2020, made in M.C.O.P. No.157 of 2017, on the file of the Sub Court, (Motor Accident Claims Tribunal) Nagapattinam.

2.The appellant-claimant filed M.C.O.P. No.157 of 2017, on the file of the Sub Court, (Motor Accident Claims Tribunal) Nagapattinam, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 09.08.2016.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the 1st respondent, rider-cum-owner of the Motorcycle and directed the 2nd respondent, as insurer of the offending vehicle, to pay a sum of Rs.2,73,745/- as compensation to the appellant.



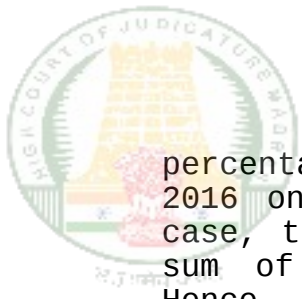
4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 08.01.2020, made in M.C.O.P. No.157 of 2017, the appellant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that in the accident, the appellant suffered grievous injuries all over the body. He has taken treatment as in-patient at Lakshana Hospital, Thiruvarur, from 11.08.2016 to 20.08.2016 and underwent surgery on 16.08.2016. The Medical Board at Government Hospital, Nagapattinam, examined the appellant and certified that the appellant suffered 36% disability. The Tribunal has awarded a meagre sum of Rs.1,08,000/- towards disability at the rate of Rs.3,000/- per percentage. The Tribunal failed to award any amount towards future prospects, future medical expenses, future transport expenses and loss of amenities. At the time of accident, the appellant was working as a Mason and was earning a sum of Rs.500/- per day. The Tribunal erroneously fixed a meagre sum of Rs.7,500/- per month as notional income. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the nature of injuries and report of Medical Board marked as Ex.P14, accepted the percentage of disability assessed by the Medical Board and awarded compensation at the rate of Rs.3,000/- per percentage. The same is in order. In the absence of any material evidence to prove the avocation and income, the Tribunal rightly fixed monthly income of the appellant at Rs.7,500/- and awarded compensation under different heads which are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

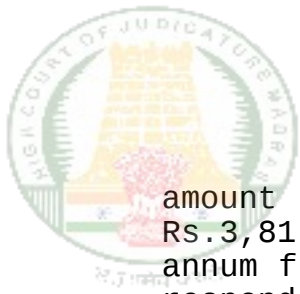
8. From the materials on record, it is seen that it is the contention of the appellant that in the accident he suffered multiple and grievous injuries all over the body. The Medical Board at Government Hospital, Nagapattinam, examined the appellant and certified that the appellant suffered 36% disability. To prove the same, the appellant has marked the disability certificate as Ex.P14. The Tribunal awarded a sum of Rs.1,08,000/- towards disability at the rate of Rs.3,000/- per percentage. This Court by judgment dated 09.01.2020 made in C.M.A.No.4870 of 2019 in the case of M/s. IFFCO TOKIO General Insurance Company Limited Vs. Venkatesh 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 from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2016. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.1,80,000/- [Rs.5,000/- x 36%], at the rate of Rs.5,000/- per percentage for 36% disability.

9.It is the contention of the appellant that at the time of accident, he was working as a Mason and was earning a sum of Rs.500/- per day. He failed to prove the same. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a meagre sum of Rs.7,500/- per month as notional income. The accident is of the year 2016. Considering the year of accident and the nature of work done by the appellant, a sum of Rs.12,000/- per month is fixed as notional income. Due to the accident, the appellant would not have worked atleast for a period of four months. Thus, the compensation granted by the Tribunal towards loss of income is modified to Rs.48,000/-. The Tribunal failed to award any amount towards loss of amenities and damage to clothes. The appellant is entitled to a sum of Rs.15,000/- towards loss of amenities and Rs.3,000/- towards damages to clothes. The amount 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.	Permanent Disability	1,08,000/-	1,80,000/-	Enhanced
2.	Medical expenses	62,745/-	62,745/-	Confirmed
3.	Transportation	10,000/-	10,000/-	Confirmed
4.	Loss of income	30,000/-	48,000/-	Enhanced
5.	Pain and sufferings	25,000/-	25,000/-	Confirmed
6.	Extra nourishment	20,000/-	20,000/-	Confirmed
7.	Attendant charges	18,000/-	18,000/-	Confirmed
8.	Loss of amenities	-	15,000/-	Granted
9.	Damages to clothes	-	3,000/-	Granted
	Total	2,73,745/-	3,81,745/-	Enhanced by Rs.1,08,000/-



10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.2,73,745/- is enhanced to Rs.3,81,745/- 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, 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.157 of 2017. 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-IX)

// True Copy //

Sub Assistant Registrar

gsa

To

The Motor Accident Claims Tribunal,
The Subordinate Judge,
Nagapattinam.

Copy To

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

+1cc to Mr.K.Varadhakamaraj, Advocate SR.No.1285

+1cc to Mr.J.Chandran, Advocate SR.No.1696

C.M.A.No.1966 of 2020

VG-II(CO)
RVM(29/09/2021)