

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3190 of 2019

Venkatasamy

.. Appellant/Petitioner

Vs.

1.Josephine Rajkumari
(R1 remained exparte before the
Tribunal)

2.M/s.United India Insurance Co. Ltd.
Motor Third Party Claims Office
No.134, Greams Road
Chennai-600 006.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.01.2019 made in M.C.O.P.No.5920 of 2015 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr.T.G.Ravichandran

For R1 : No appearance

For R2 : Mr.J.Chandran

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 30.01.2019 made in M.C.O.P.No.5920 of 2015 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.5920 of 2015 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.21,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.01.2013.

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 auto belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said auto to pay a sum of Rs.5,26,400/- 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 fractures of right tibia, right distal radius and multiple injuries all over the body. The Regional Medical Board after examining the appellant, certified that the appellant suffered 15% disability and the disability certificate was marked as Ex.C1. The Tribunal without any valid reason, reduced the disability to 10% and awarded meagre amount as compensation towards loss of earning. The appellant has taken treatment as in-patient in Apollo Hospital, Chennai, from 31.01.2013 to 06.02.2013 and again on 03.07.2013. The appellant was a farmer and was earning a sum of Rs.25,000/- per month. The appellant could not do the work as he was doing earlier. The Tribunal has not awarded any compensation towards loss of income during treatment period. 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 has not produced any document to prove that he suffered functional disability and lost his earning power. The Tribunal without considering the same, erred in adopting multiplier method to award compensation towards loss of earning. Therefore, the appellant is not entitled to any enhancement of compensation and prayed for dismissal of the appeal.

7. Though notice has been served on the 1st respondent and her name is printed in the cause list, there is no representation on behalf of her either in person or through counsel.

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 on record, it is seen that it is the contention of the appellant that in the accident, he suffered fractures of right tibia, right distal radius and multiple injuries all over the body. The Medical Board examined the appellant and certified that the appellant suffered 15% disability. The Tribunal reduced the disability to 10% and

awarded a sum of Rs.84,000/- towards loss of earning by adopting multiplier method, which is not proper. The Tribunal, without there being any evidence to prove that the appellant has suffered functional disability, adopted multiplier method and granted compensation by reducing the disability by 5% from 15% to 10%. In view of the same, the appellant is not entitled to any enhancement of compensation towards loss of earning.

9(i) According to the appellant, he has taken treatment as in-patient in Apollo Hospital, Chennai, from 31.01.2013 to 06.02.2013 and again on 03.07.2013. To prove the same, the appellant has marked the discharge summaries as Exs.P7 and P8. A sum of Rs.3,600/- awarded by the Tribunal towards attendant charges is meagre and hence, the same is hereby enhanced to Rs.10,000/-. The Tribunal has awarded a sum of Rs.10,000/- altogether towards transportation and extra nourishment, which is meagre and hence, Rs.10,000/- and Rs.5,000/- are awarded towards transportation and extra nourishment respectively. The Tribunal has not awarded any compensation towards damage to clothes. Hence, a sum of Rs.2,000/- is awarded towards damage to clothes.

9(ii) The appellant has contended that he was aged 63 years, he was a farmer and was earning a sum of Rs.25,000/- per month at the time of accident. Due to the injuries, the appellant could not do the work as he was doing earlier and the Tribunal has not awarded any compensation towards loss of income during treatment period. From the discharge summaries filed by the appellant, it is seen that the appellant was advised rest for a period of two months. Considering the age of the appellant and discharge summaries, a sum of Rs.30,000/- is awarded towards loss of income during treatment period. 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.	Pain and suffering	20,000	20,000	Confirmed
2.	Transportation and extra nourishment	10,000	10,000 5,000	Enhanced

3.	Loss of earning	84,000	84,000	Confirmed
4.	Medical expenses	3,98,760	3,98,760	Confirmed
5.	Loss of amenities	10,000	10,000	Confirmed
6.	Attendant charges	3,600	10,000	Enhanced
7.	Damage to clothes	-	2,000	Granted
8.	Loss of income during treatment period	-	30,000	Granted
	Total	5,26,360 rounded off to 5,26,400	5,69,760 rounded off to 5,69,800	Enhanced by Rs.43,400/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,26,400/- is hereby enhanced to Rs.5,69,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent 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

/TRUE COPY/

Sub-Assistant Registrar

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To
1.V Judge
Motor Accident Claims Tribunal
Small Causes Court, Chennai.

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

+1cc to MR.J.CHANDRAN, ADVOCATE, SR.NO. 1695

C.M.A.No.3190 of 2019

VBA (CO)
KKN 23.04.2021



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