



C.M.A.No.2695 of 2022

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 22.03.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.2695 of 2019

and

CMP.No.11990 of 2019

1.Mahendran

... Appellant/Petitioner

Vs.

1.R.Srinivasan

2.The New India Assurance Company Limited,
Ram Complex, 29, Paramathi Road,
Namakkal Town.

..Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 01.10.2020 made in M.C.O.P.No.421 of 2008, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.C.Thangaraju
For Respondents :Mr.K.Vinod for R2
No Appearance for R1

JUDGMENT

The claimant has filed this appeal seeking enhancement of the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Namakkal, in M.C.O.P.No.421 of 2008.



C.M.A.No.2695 of 2022

2. It is the case of the appellant that on 13/06/2008 he was acting as a cleaner in the Truck multi Axle goods vehicle bearing Registration No.TN-28/AA-3575 belonging to the first respondent and insured with the second respondent. The driver of the said vehicle had driven the same in a rash and negligent manner and had hit the stationary truck bearing Registration No.KA-25/B176. On account of the impact, he had sustained grievous injuries all over his body. He had sustained injuries to his back bone, hip and his spinal cord was completely damaged rendering him permanently/partially disabled. Therefore, he claimed compensation of Rs.20,00,000/- from the respondents. The first respondent had not chosen to contest the petition and remained ex-parte. The second respondent/insurance company had taken the plea denying the negligence, liability etc., and also contending that the driver of the lorry bearing Registration No.KA-25B-176 was equally responsible for the accident as they had stationed their vehicle on the road without following the rules regarding signaling.

3. The Tribunal below on considering the evidence and arguments had arrived at compensation of Rs.13,60,758/-. The Tribunal has



C.M.A.No.2695 of 2022

taken a notional income of just Rs.3,000/- and awarded compensation of a sum of Rs.7,34,400/-.

4. The learned counsel for the appellant would further submit that the Doctor who had examined him had assessed his disability at 90%. It is opined that the injury to the spinal cord has completely rendered the appellant incapable of any work and infact the disability is near total. It is also to be borne in mind that he was working as a cleaner prior to this accident. The appellant would contend that the Tribunal below ought to have fixed the notional income at Rs.7,700/- and adopted the multiplier method and taken a multiplier of 18 and taken permanent disability at 100%. The amounts awarded under the other heads also required to be enhanced.

5. Per contra, Mr.K.Vinoth, learned counsel appearing on behalf the respondent/insurance company would contend that the Tribunal below has not only granted amount under the head 'pain and suffering', but also granted a like amount under the head of loss of amenities. He would



submit that the compensation granted for disability is very fair and does not require to be revisited. He therefore, sought to sustain the award with the amount granted under the head of loss of amenities being set aside.

6. Heard the learned counsel.

7. It is a fact that the appellant had sustained a very serious injury, as a result of which, he has suffered a partial permanent disability, which according to the Doctor is nearly 60% and the injuries would indicate that the appellant would not be in a position to resume any activity as two discs in the spinal cord have been broken. Since the appellant has not been able to produce proof of his income a notional income at Rs.4,000/ is taken as the accident is of the year 2008. 40% could be added towards additional prospects. Therefore, the monthly income would workout to a sum of Rs.5,600/-. The appellant is aged about 21 years and the life before him appears to be very bleak. Therefore the loss under the head of disability would be $Rs.5,600/- \times 12 \times 18 \times 90/100 = 10,88,640/-$. The award granted under the head of loss of amenities has to be necessarily deleted since under the



C.M.A.No.2695 of 2022

head of pain and suffering, the appellant has been awarded a sum of Rs.1,00,000/-. A further sum of Rs.30,000/- can be added under the head of transport charges. Considering the fact that the appellant is still unable to walk and requires constant medical attention, the award under the head of transport charges should be enhanced to a sum of Rs.50,000/-. Therefore, the calculation of enhanced amount awarded by this Court under various heads are tabulated below:

Loss of disability	Rs.10,88,640/-
Loss of pain and suffering	Rs.1,00,000/-
Loss of amenities	Rs.1,00,000/-
Nutritious food	Rs.30,000/-
Loss of transportation	Rs.50,000/-
Loss of marital life	Rs.50,000/-
Loss of attendant charges	Rs.20,000/-
Loss of medical expenses	Rs.2,06,358
Total	Rs.16,44,998/-

8. In fine, the Civil Miscellaneous Appeal is allowed and the compensation of Rs.13,60,758/- awarded by the tribunal is enhanced by this Court to Rs.16,44,998/- along with interest at the 7.5% per annum as awarded by the tribunal. The Insurance Company is directed to deposit the



C.M.A.No.2695 of 2022

enhanced compensation amount awarded by this Court along with interest at 7.5% per annum, less the amount, if any already deposited, to the credit of MCOP.No.421 of 2008 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Namakkal, within a period of four weeks from the date of receipt of a copy of this judgment. The Appellant shall pay Court fees for the compensation awarded if not already paid. On such payment and on proof of the same being shown, the Appellant is permitted to withdraw the award amount. On such deposit, the claimant is permitted to withdraw the same. No costs. Consequently, connected Miscellaneous Petition is closed.

22.03.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
ub



C.M.A.No.2695 of 2022

To

WEB COPY

1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Namakkal.

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



WEB COPY



C.M.A.No.2695 of 2022

P.T. ASHA, J,

ub

C.M.A.No.2695 of 2019
and
CMP.No.11990 of 2019

22.03.2022