



WEB COPY



C.M.A.No.2015 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2023

CORAM :

THE HON'BLE MR.JUSTICE A.A. NAKKIRAN

Civil Miscellaneous Appeal No. 2015 of 2010

K. Sundar

.. Appellant

Versus

1.P.Subramani

(R1 set ex-parte before the tribunal)

2.United India Insurance Co.Ltd.,

rep. By its Branch Manager,

235, Gandhi Market Road,

Arni.

.. Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.06.2009 made in M.C.O.P.No.158 of 2008 on the file of the Motor Accident Claims Tribunal, Sub-Court, Arni, Thiruvannamalai District.

For Appellant : Mr. P. Satheesh Kumar

For R2 : Mr. J. Chandran

JUDGMENT

This Civil Miscellaneous Appeal is filed by the claimant seeking for enhancement of compensation made under the impugned award dated 30.06.2009 passed in M.C.O.P. No. 158 of 2008 on the file of the Motor

Accident Claims Tribunal, Sub-Court, Arni, Thiruvannamalai District.

<https://www.mhc.tn.gov.in/judis>



C.M.A.No.2015 of 2010

2. The appellant is the claimant in M.C.O.P.No.158 of 2008 on the file of the Motor Accident Claims Tribunal, Sub-Court, Arni, Thiruvannamalai District. He filed the above claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.05.2007.

3. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the Lorry belonging to the first respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.85,000/- as compensation to the appellant/claimant.

4. Not being satisfied with the amount awarded by the Tribunal, the appellant/claimant has come out with the present appeal for enhancement of compensation.

5. The learned counsel appearing for the appellant contended that in the accident, the appellant sustained injury on left shoulder, left elbow, both hands, severe injury on right leg thigh and also amputation of thumb finger in right hand. The P.W.2/Doctor-Shanmuga Sundaram, who examined the



C.M.A.No.2015 of 2010

appellant certified that he suffered 40% disability and disability certificate was marked as Ex.P7. However, the Tribunal has awarded only a meagre sum of Rs.80,000/- towards disability by calculating at the rate of Rs.2,000/- per percentage of disability. The Tribunal ought to have awarded a sum of Rs.1,20,000/- towards disability, by atleast calculating at the rate of Rs.3,000/- per percentage. The Tribunal also failed to award any amount towards partial loss of earnings even though the appellant sustained injury in his right thumb finger. On the contrary, the Tribunal ought to have awarded atleast Rs.30,000/- under the head of partial loss of earnings. Similarly, the Tribunal has not awarded any amount towards attendant charges, transportation and loss of amenities. Thus, the compensation awarded by the Tribunal under different heads are meagre and he prayed for enhancement of compensation.

6. Per contra, Mr.J.Chandran, learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal has rightly fixed the disability based on the assessment of disability by P.W.2/Doctor. The appellant is not entitled to any amount towards attendant charges, transportation and loss of amenities given the nature of injury and the period of his hospitalisation. The amounts awarded by the Tribunal under different heads are not meagre but they are in consonance with the nature of injuries sustained



C.M.A.No.2015 of 2010

by the appellant. Therefore, he would contend that the appellant has not made out a case for enhancement of compensation and prayed for dismissal of the appeal.

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

8. From the pleadings, evidence and award of Tribunal it is seen that the appellant has suffered grievous injury in the accident. P.W.2-Doctor assessed disability of the appellant at 40%. The Tribunal has also taken 40% disability and awarded compensation by applying percentage method.

9. The appellant contended that he was earning Rs.4,500/- per month by working as an employee in a lorry owned by the second respondent. However, he failed to substantiate the said contention by producing any document to show the income. In the absence of material evidence, the Tribunal fixed the notional income of the appellant at Rs.4,500/- per month. The accident is of the year 2007. Considering the date of accident and avocation of the appellant, the notional income fixed at Rs.4,500/- is proper.



C.M.A.No.2015 of 2010

WEB COPY 10. Due to the injuries suffered by the appellant, he would not have attended his work atleast for a period of seven months. Hence, a sum of Rs.31,500/- (Rs.4,500/- X 7 months) is awarded towards loss of income during the period of treatment.

11. The Tribunal has not awarded any amounts towards attendant charges, transportation and loss of amenities. Considering the nature of injuries and period of treatment, a sum of Rs.3,000/-, Rs.4,000/- and Rs.10,000/- are awarded towards attendant charges, transportation and loss of amenities respectively.

12. The amount awarded by the Tribunal towards pain & sufferings and extra nourishment are meagre and the same are enhanced to Rs.10,000/- and Rs.3,000/- respectively.

13. The amount awarded by the Tribunal under other heads are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



C.M.A.No.2015 of 2010

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	-	31,500/-	Granted
2.	Disability	80,000/-	80,000/-	Confirmed
3.	Transportation	-	4,000/-	Granted
4.	Pain & Sufferings	2,500/-	10,000/-	Enhanced
5.	Attendant charges	-	3,000/-	Granted
6.	Loss of amenities	-	10,000/-	Granted
7.	Extra Nourishment	2,500/-	3,000/-	Enhanced
8.				
	Total	Rs.85,000/-	Rs.1,41,500/-	enhanced by Rs.56,500/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.85,000/- is hereby enhanced to Rs.1,41,500/-. The appellant is entitled to interest at the rate of 7.5% per annum for the enhanced award amount now determined by this Court. The second respondent-Insurance Company is directed to deposit the enhanced award amount along with interest and costs now determined by this Court, 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 entire award amount along with interest and costs, less the amount if any, already withdrawn. The appellant is directed



C.M.A.No.2015 of 2010

to pay necessary Court fee, if any on the amount now enhanced by this Court.

WEB C.M.A. No costs.

gbi

10.03.2023

Index : Yes / No

Internet : Yes/ No

Speaking/Non-speaking order

To

1.The Sub-Judge,
Motor Accident Claims Tribunal,
Arni, Thiruvannamalai District.

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



WEB COPY



C.M.A.No.2015 of 2010

A.A.NAKKIRAN,J.

gbi

C.M.A.No.2015 of 2010

10.03.2023