



C.M.A.No.2266 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.09.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.2266 of 2018

D.Vijayakanth

.. Appellant

Vs.

1. C.Dharmalingam

2. Shriram General Insurance Co. Ltd.,
2nd Floor, Rear Portion, Nagappa Complex,
1076, Mettupalayam Road,
Coimbatore-641 002.

.. Respondents

Civil Miscellaneous Appeal against the Award and decree dated 05.01.2018 made in M.C.O.P.No.2113 of 2011 on the file of the Motor Accidents Claims Tribunal / Special Sub-Court No.2, Salem.

For appellant : Mr.K.Varadha Kamaraj

For respondents : No appearance for R-1

M/s.R.Srividhya for R-2



C.M.A.No.2266 of 2018

WEB COPY

JUDGMENT

The appellant is the claimant. He has filed the claim petition seeking compensation and after enquiry, the Tribunal awarded Rs.7,88,519/-, against which, the claimant has preferred this appeal for enhancement of the compensation.

2. On 02.11.2011 at about 3 p.m., when the claimant was riding a motor cycle bearing Registration No.TN-36-K-0437, along with his friend Palanisamy, on the Ariyur to Pellur Road, near Thandavankottai, the driver of a Minidor vehicle bearing Registration No.TN-36-J-7722 drove it in a rash and negligent manner from opposite direction and dashed against the claimant, due to which, the claimant sustained injuries. Immediately after the accident, the claimant took first-aid in the Government Hospital, Pennagaram and thereafter at Kurinji Hospital, Salem. The claimant was a Welder in a crusher company under the employment of



C.M.A.No.2266 of 2018

J.K.Crusher at Sriperumbadur, and earning not less than Rs.10,000/- per month and hence, he has filed the claim petition seeking compensation of Rs.10 lakhs from the respondents.

3. The second respondent/Insurance Company filed counter disputing the manner of the accident, the claim of the claimant and the factum of insurance. The driver of the Minidor vehicle was not having effective driving licence to drive the said vehicle. The second respondent is not liable to pay any compensation and prayed to dismiss the claim petition.

4. Before the Tribunal, the claimant examined himself as P.W.1 and one Palanisamy was examined as P.W.2 and Exs.P-1 to P-16 were marked. On the side of the respondents before the Tribunal, R.W.1 and R.W.2 were examined and Exs.R-1 to R-4 were marked. Besides, Ex.X-1 was marked before the Tribunal. Exs.C-1 and C-2 were marked as Court documents.

Page No.3/ 12



C.M.A.No.2266 of 2018

5. The Tribunal, after enquiry, awarded compensation of Rs.7,88,519/- with interest @ 7.5% per annum from the date of claim petition till the date of deposit, against which, the claimant has filed the present appeal seeking enhancement of compensation.

6. Learned counsel for the appellant/claimant submitted that though the liability is not in dispute and the accident is also not in dispute, the present appeal has been filed by the claimant seeking enhancement of the compensation. Though the claimant sustained multiple grievous injuries and though the accident took place on 02.11.2011, he took treatment for four years and he was working as Welder and after accident, he could not continue to do that welding work as before and there is loss of earning and also due to the accident, there is shortening of leg and he also lost even marital prospects. The Tribunal has not considered the above aspects and simply awarded compensation under different heads, which warrants interference.

Page No.4/ 12



C.M.A.No.2266 of 2018

WEB COPY

7. Learned counsel for the second respondent/Insurance Company submitted that there is no proof for employment/income and loss of earning. Considering the medical records, the Tribunal has rightly awarded the compensation, which is 'just' compensation and that there is no merit in the appeal and the same is liable to be dismissed.

8. Heard both sides and perused the materials available on record.

9. The claimant has filed the present appeal for enhancement of the compensation stating that the compensation awarded by the Tribunal does not reflect the 'just' compensation, which is very low and therefore, the claimant has approached this Court.

Page No.5/ 12



C.M.A.No.2266 of 2018

10. The accident took place on 02.11.2011 and thereafter, he took treatment and he has produced the disability certificate from the Medical Board, which has fixed the disability at 60%. Though the claimant has stated that he was a Welder and doing welding work and from that work, he was earning a sum of Rs.12,000/- per month, there is no evidence and except the claimant, there is no other witness examined to prove the employment of the claimant and also his income. Considering the same, the Tribunal has fixed the notional income of Rs.6,500/-. The appellant/claimant has not proved through any contra evidence to show that he was earning a sum of Rs.12,000/- p.m. from the welding profession and this Court finds that there is no perversity in appreciation of evidence by the Tribunal in fixing the notional income in the absence of any contra evidence.

11. As far as the disability compensation is concerned, the Medical Board has given the percentage of disability at 60% and the accident was of the year 2011 and during the relevant period,



C.M.A.No.2266 of 2018

Rs.3,000/- per percentage was awarded and the Tribunal has also rightly considered the same and awarded compensation of Rs.3,000/- per percentage of the disability and thus, $\text{Rs.3,000/-} \times 60\% = \text{Rs.1,80,000/-}$ is awarded as the compensation under the head 'disability' and there is no perversity in the same.

12. The Tribunal has also rightly awarded a sum of Rs.1,00,000/- for pain and suffering and also for loss of amenities at Rs.75,000/-. The medical bills were granted by the Tribunal at Rs.3,54,019/- and there is no perversity in awarding the compensation under these heads. The Tribunal has appreciated the documents available on record and granted the above compensation, which needs no interference by this Court.

13. As far as the loss of income is concerned, the Tribunal has awarded Rs.39,000/-(Rs.6,500 x 6) for the period of six months. Considering the injury sustained by the claimant and the period of



C.M.A.No.2266 of 2018

treatment undergone by him, and he could not go for his work atleast for one year, though there is no specific evidence and considering the materials available on record, this Court is of the view that the loss of income should be for atleast one year, i.e. Rs.6,500x12=Rs.7,80,000/-. Further, the medical records show that the claimant has undergone treatment for minimum 2 to 4 years and therefore, the amount awarded by the Tribunal for transportation at the rate of Rs.15,000/- is very low and the same is enhanced to Rs.50,000/-.

14. Considering the nature of injuries and the period of treatment undergone by the claimant, the amount awarded under the head 'extra-nourishment' is increased from Rs.10,000/- to Rs.50,000/-.

15. The amounts awarded by the Tribunal under the other heads being just and fair, the same are confirmed.

16. Thus, the modified compensation is tabulated



C.M.A.No.2266 of 2018

hereunder:

<i>Sl.No.</i>	<i>Heads under which the compensation is awarded</i>	<i>Amounts awarded by the Tribunal (in Rs.)</i>	<i>Amounts awarded by this Court (in Rs.)</i>
1	Permanent disability	1,80,000	1,80,000
2	Pain and suffering	1,00,000	1,00,000
3	Loss of amenities in life	75,000	75,000
4	Medical expenses based on medial bills	3,54,019	3,54,019
5	Loss of income	39,000	7,80,000
6	Transportation charges	15,000	50,000
7	Loss of extra-nourishment	10,000	50,000
8	Attender's charges	15,000	15,000
9	Loss of clothes	500	500
	Total	7,88,519	16,04,519

17. With the above modification in the compensation, the appeal filed by the claimant is partly allowed. There shall be no order as to costs in the present appeal.

18. The second respondent/Insurance Company is directed to deposit the total compensation as computed by this Court, to the credit of M.C.O.P.No.2113 of 2011 before the Motor Accidents Claims



C.M.A.No.2266 of 2018

Tribunal/Special Sub-Court No.2, Salem, along with interest and costs as awarded by the Tribunal, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment.

19. On such deposit being made, the Tribunal is directed to calculate the above enhanced compensation including interest and costs (as awarded by the Tribunal), after adjusting the amount, if any already withdrawn by the claimant and credit the actual amount in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and othres).

20. The appellant/claimant is directed to pay Court fee, if any on the enhanced compensation now awarded by this Court.

13.09.2023

CS

Page No.10/ 12



C.M.A.No.2266 of 2018

WEB COPY

To

1. The Motor Accidents Claims Tribunal
(Special Sub-Judge), Salem.
2. The Section Officer,
V.R.Section, High Court, Madras.



WEB COPY



C.M.A.No.2266 of 2018

P. VELMURUGAN, J

CS

C.M.A.No.2266 of 2018

13.09.2023

Page No.12/ 12