

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.117 of 2015

J.Jackson

.. Appellant /Petitioner

Vs.

1.K.Jothi

2.The Oriental Insurance Co. Ltd.,
No.8, Esplanade, 3rd Floor,
UIL Buildings, Chennai - 600 108.

.. Respondents /Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.12.2006 made in M.C.O.P.No.5150 of 2001 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Mr.N.S.Sivakumar

For R2 : Mr.S.Arunkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 22.12.2006 made in M.C.O.P.No.5150 of 2001 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

2.The appellant is claimant in M.C.O.P.No.5150 of 2001 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai. 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 10.08.2001.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the lorry belonging

to the first respondent and directed both the respondents jointly and severally to pay a sum of Rs.39,000/- as compensation to the appellant.

4. Not being satisfied with the award amount granted 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 the appellant has let in evidence to prove that he suffered 65% permanent disability. The Tribunal without properly considering the oral and documentary evidence let in by the appellant, awarded only a sum of Rs.15,000/- towards permanent disability. The said amount is very meager. The appellant took treatment for more than 19 days in different hospitals and skin grafting was done. The amount awarded towards pain and suffering is too meager. The Tribunal has not awarded any amount towards attendant charges. Due to the permanent disability suffered by the appellant, he is not able to do his work as he was doing earlier and he has without employment from 10.08.2001 to 31.12.2002. The Tribunal has granted only a sum of Rs.9,000/- towards loss of income and has not granted any amount towards loss of earning capacity and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the disability certificate issued by P.W.2/Doctor certifying that the appellant suffered 65% disability is not correct and the disability of the appellant certified by P.W.2/Doctor is excessive. The Tribunal considering the evidence of P.W.2/Doctor in its entirety, granted a sum of Rs.15,000/- towards permanent disability, which is not meager and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the second respondent and perused all the materials available on record.

8. From the materials on record, it is seen that the appellant has examined the Doctor as P.W.2 and also marked disability certificate as Ex.P3. The Doctor has certified the disability of the appellant as 65%. The Tribunal considering the evidence of the Doctor by giving reason held that 65% of disability is excessive. The Tribunal has granted only a sum of Rs.15,000/- towards permanent disability. The Tribunal having held that 65% of disability as assessed by the P.W.2/Doctor is excessive, has not fixed percentage of disability and has not stated reason for awarding only a sum of Rs.15,000/- under the head of permanent disability. This Court taking into consideration that the accident took place on 10.08.2001, the nature of injuries and treatment taken by the appellant and evidence of P.W.2/Doctor, fixes percentage of disability of the

appellant at 50% and the appellant is entitled to a sum of Rs.50,000/- (1000 X 50%) towards permanent disability by awarding Rs.1,000/- per percentage of disability. The learned counsel appearing for the appellant contended that the appellant was without employment from 10.08.2001 to 31.12.2002 and claimed a sum of Rs.50,000/- towards loss of income. The Tribunal has fixed notional income of the appellant at Rs.3,000/- per month and granted a sum of Rs.9,000/- (3000 X 3) towards loss of income for three months. Considering the entire materials on record, a sum of Rs.18,000/- (Rs.3,000/- X 6 = Rs.18,000/-) is granted towards loss of income for six months. The Tribunal has not granted any amount towards loss of earning capacity. In the nature of injuries and nature of work, the appellant is entitled to a sum of Rs.15,000/- towards loss of earning capacity. The Tribunal has not granted any amount towards attendant charges and extra nourishment and a sum of Rs.5,000/- under each head is granted. The amount awarded by the Tribunal under the head of pain and suffering is 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.	Loss of income	9,000	18,000	enhanced
2.	Extra nourishment	-	5,000	awarded
3.	Attendant charges	-	5,000	awarded
4.	Loss of earning capacity	-	15,000	awarded
5.	Pain and Suffering	15,000	15,000	confirmed
6.	Permanent Disability	15,000	50,000	enhanced
	Total	39,000	1,08,000	enhanced by Rs.69,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.39,000/- is hereby enhanced to Rs.1,08,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. It is made clear that the

appellant/claimant shall not be entitled for any interest for the delay period in filing the appeal. The second respondent/Insurance Company is directed to deposit the enhanced award amount with interest 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 order. On such deposit, the appellant is permitted to withdraw the enhanced award amount with interest, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk/kj

To

1.The VI Judge,
The Motor Accidents Claims Tribunal
The learned Judge
VI Judge, Court of Small Causes
Chennai.

2. The Section Officer,
VR Section, High Court,
Madras 60 104.

+lcc to Mr.N.S.Siva Kumar, Advocate, S.R.No. 81463
+lcc to Mr.S.Arun Kumar, Advocate, S.R.No. 81491

C.M.A.No.117 of 2015

EV (CO)
GN(18/02/2019)

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