

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2691 of 2018

C.Balan

.. Appellant/Claimant

Vs.

1. S.Suresh

2. The United India Insurance Co. Ltd.,
No.134, Sillingi Building, Greams Road,
Chennai 600 006. ... Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.07.2018 made in M.C.O.P.No.1164 of 2017 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.K.Suryanarayanan

For R1 : No appearance

For R2 : Mr.A.Dhiraviyanathan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 09.07.2018 made in M.A.C.T.O.P.No. 1164 of 2017 on the file of the Motor Accidents Claims Tribunal / IV Court of Small Causes, Chennai.

2.The appellant is claimant in M.A.C.T.O.P.No.1164 of 2017 on the file of the Motor Accidents Claims Tribunal / IV Court of Small Causes, Chennai. He filed the above claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 16.01.2017.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due

to rash and negligent driving by the rider of the two wheeler/first respondent and directed the second respondent being the insurer of the said two wheeler, to pay a sum of Rs.2,12,500/- 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 for enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the Tribunal has failed to appreciate the evidence let in by the appellant and erred in awarding meager amount of compensation. The appellant has examined P.W.2/Doctor and produced Ex.P7 disability certificate and proved that he suffered 40% disability. The Tribunal on erroneous reason reduced the percentage of disability from 40% to 20% and granted compensation only on percentage basis. The appellant has examined the Doctor to prove that he is not working as a Watchman as he was doing earlier and the Tribunal ought to have applied multiplier method for granting compensation towards permanent disability. The amounts granted by the Tribunal under different heads are very meager and prayed for enhancement of compensation.

6. Per Contra, the learned counsel appearing for the second respondent/Insurance Company contended that P.W.2/Doctor is not a Doctor, who treated the appellant and the Tribunal considering the nature of injuries sustained by the appellant and evidence of Doctor, reduced the percentage of disability by giving proper reason. The appellant has not proved that he suffered loss of earning capacity and there is functional disability and hence, the award of the Tribunal on percentage basis is proper. The compensation awarded by the Tribunal under different heads are excessive and prayed for dismissal of the appeal.

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

8. From the materials on record, it is seen that the appellant has examined P.W.2/Doctor and he deposed the nature of injuries sustained by the appellant and certified the disability of the appellant at 40%. The Tribunal has reduced the same to 20% on the ground that P.W.2/Doctor was not a Doctor who treated the appellant and he has not filed any working sheet. At the same time, the Tribunal having taken note of the fact that P.W.2 issued Ex.P7/disability certificate only after examining the appellant recently, reduced the percentage of disability to 20% from 40%. The reason given by the Tribunal for reducing percentage of disability is not proper and the appellant is

entitled to compensation for 40% of disability as assessed by the Doctor. The contention of the learned counsel appearing for the second respondent that the appellant has failed to prove his functional disability for loss of earning capacity and in such circumstances, the award of the Tribunal granting compensation on percentage basis is correct, has considerable force. On the failure on the part of the appellant to prove the functional disability, he is not entitled to compensation by multiplier method. The appellant was in-patient in hospital from 17.01.2017 to 12.02.2017 and 01.03.2017 to 18.03.2017 i.e. nearly 45 days and he underwent surgeries. Considering the nature of injuries sustained by the appellant and treatment taken by him, the amount granted by the Tribunal towards permanent disability is modified as Rs.1,20,000/- (40% X 3000). A sum of Rs.10,000/- and Rs.40,000/- awarded by the Tribunal towards transportation & extra nourishment and pain and suffering are hereby enhanced to Rs.20,000/- and Rs.50,000/- respectively. The amounts awarded by the Tribunal under all the other heads are just and reasonable and 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
1.	Transportation and extra nourishment	10,000	20,000	enhanced
2.	Attendant charges	22,500	22,500	confirmed
3.	Medical expenses	10,000	10,000	confirmed
4.	Disability	60,000	1,20,000	enhanced
5.	Loss of earning	50,000	50,000	confirmed
6.	Pain and suffering	40,000	50,000	enhanced
7.	Loss of amenities	20,000	20,000	confirmed
	Total	2,12,500	2,92,500	Enhanced by Rs.80,000/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at

Rs.2,12,500/- is hereby enhanced to Rs.2,92,500/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The second respondent/Insurance Company is directed to deposit the enhanced award amount along 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 judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal
IV Judge, Small Causes Court, Chennai.

Copy To

The Section Officer,
VR Section, High Court,
Madras-104 (2 copies)

+lcc to Mr.A.Dhiraviyanathan, Advocate in sr.no.87342

+lcc to Mr.K.Suryanarayanan, Advocate in sr.no.87531 (06.03.19)

C.M.A.No.2691 of 2018

SSI(CO)
CS/19/02/2019