

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1712 of 2015

R.Gokul

.. Appellant/ Petitioner

Vs.

1.Bhandari Southern Carriers Pvt. Ltd.,
No.182, Poonamallee High road
Kilpauk, Chennai-10.

2.The New India Assurance Company Limited
Now at T.P.claims hub
Justice Basheer Ahamed Building
5th floor, 45, moore street
Chennai-600 001.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.11.2010 made in M.C.O.P.No.30 of 2006 on the file of Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai.

For Appellant : Mr.G.Bhadwaj

For R2 : M/s.A.Salome
for Mr.C.Ramesh Babu

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 10.11.2010 made in M.C.O.P.No.30 of 2006 on the file of Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai.

2.The appellant is claimant in M.C.O.P.No.30 of 2006 on the file of Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai. He filed the said claim petition claiming a sum of Rs.8,48,100/- as compensation for the injuries sustained by him in the accident that took place on 31.07.2005.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the van belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said van to pay a sum of Rs.3,34,215/- as compensation to the appellant.

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

5.The learned counsel appearing for the appellant/claimant contended that the appellant was aged 25 years at the time of accident and was earning a sum of Rs.3,900/- per month by working as a cleaner. The Tribunal ought to have fixed monthly income of the appellant by considering 30% increase for future prospects. He sustained fracture on his pelvic bone and on both bones of his right leg and his left foot was crushed resulting which his toes were amputated. Due to the injuries, the appellant has lost his earning capacity and the Tribunal ought to have adopted multiplier method for awarding compensation towards permanent disability. The Tribunal has not awarded any amount towards future medical expenses and transportation charges. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not proved that he suffered functional disability and he could not do the work as he was doing earlier. In the absence of any material evidence, the multiplier method cannot be adopted. The Tribunal after considering the materials available on record, has awarded compensation, which is not meagre. The appellant has not made out any case for enhancement of compensation 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 2nd respondent and perused all the materials available on record.

8.From the materials available on record, it is seen that the appellant has contended that he was aged 25 years at the time of accident and was earning a sum of Rs.3,900/- per month by working as a cleaner. The appellant during his cross-examination has deposed that now he is working as a writer in a company and is earning a sum of Rs.7,500/- per month. Considering the same, the Tribunal held that the earning capacity of the appellant has not been reduced and applied

percentage method for awarding compensation towards disability. The Tribunal fixed 55% disability and awarded a sum of Rs.1,10,000/- (Rs.2,000/- X 55%) by awarding a sum of Rs.2,000/- per percentage of disability, which is proper. The Tribunal has fixed Rs.3,900/- as monthly income of the appellant and awarded a sum of Rs.19,500/- (Rs.19,500/- X 5) towards loss of income for five months, which is meagre. It is seen from the records that the appellant sustained crush injury on his left foot and all five toes were amputated. He took treatment in Sooriya hospital as in-patient from 31.07.2005 to 17.08.2005 and underwent surgery. Considering the nature of injuries sustained by the appellant, he would not have gone for work atleast for eight months. Hence, a sum of Rs.31,200/- (Rs.3,900/- X 8) is awarded towards loss of income for a period of eight months. The Tribunal has not awarded any amount towards attendant charges. Considering the period of treatment taken by the appellant, this Court awards a sum of Rs.20,000/- towards attendant charges. A sum of Rs.5,000/- each awarded by the Tribunal towards transportation and extra nourishment are meagre and this Court awards a sum of Rs.10,000/- and Rs.20,000/- towards transportation and extra nourishment respectively. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, they 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 or reduced
1.	Loss of income	19,500	31,200	Enhanced
2.	Transport to hospital	5,000	10,000	Enhanced
3.	Extra nourishment	5,000	20,000	Enhanced
4.	Damages to clothing	500	500	Confirmed
5.	Medical expenses	1,19,215	1,19,215	Confirmed
6.	Attendant charges	-	20,000	Granted
7.	Loss of amenities	50,000	50,000	Confirmed
8.	Pain and suffering	25000	25,000	Confirmed

9.	Permanent disability	1,10,000	1,10,000	Confirmed
	Total	3,34,215	3,85,915	Enhanced by Rs.51,700/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,34,215/- is hereby enhanced to Rs.3,85,915/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, 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/claimant 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 I)

//True Copy//

Sub Assistant Registrar

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To

1. The III Judge, Motor Accident Claims Tribunal
Small Causes Court, Chennai.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.G.Bharadwaj , Advocate SR.No. 102438

+1cc to Mr.C.Ramesh Babu , Advocate SR.No. 101601

C.M.A.No.1712 of 2015

A.SK(21/09/2020)