

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO1201 OF 2016

Shadrach Sujesh Suriya

.. Appellant/Petitioner

Vs.

1. B.Kala

2. ICICI Lombard General Insurance
Company Limited,
Nungambakkam, Chennai 34

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.03.2016 made in M.C.O.P.No.5827 of 2012 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mrs.R.Sreevidhya for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 02.03.2016 made in M.C.O.P.No.5827 of 2012 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.5827 of 2012 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 19.10.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car bearing Registration No.TN 22 CV 6959 belonging to the first respondent and directed the second respondent, as insurer of the vehicle to pay a sum of Rs.1,53,500/- as compensation to the appellant.

4.Not being satisfied with the amounts 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 contended that the appellant was aged 27 years at the time of the accident and was working as Agency Manager in Birla Sun Life Insurance and was earning a sum of Rs.18,500/- per month and marked salary certificate as Ex.P7. However, the Tribunal fixed a meagre sum of Rs.6,500/- as monthly income. Due to the grievous injuries sustained in the accident, the appellant could not do his work for a period of six months but granted compensation towards loss of income only for a period of one month. In the accident, the appellant suffered grievous injuries and took treatment in the hospital as in-patient from 19.10.2012 to 24.10.2012 and marked Ex.P4/ Discharge summary. P.W.2/Doctor certified the percentage of disability of the the appellant as 40%. The Tribunal erred in reducing the percentage of disability from 40% to 25% and awarded compensation of Rs.75,000/- towards disability. The Tribunal failed to award any amount towards loss of earning power and the amounts awarded by the Tribunal under different heads are also meagre and prayed for enhancement of compensation.

6.Per contra, Mrs.R.Sree Vidhya, learned counsel appearing for the second respondent-Insurance Company contended that P.W.2/Doctor has not filed any worksheet and guidelines to substantiate the disability assessed by him. Hence, the Tribunal has rightly reduced the percentage of disability to 25%. Though the appellant has marked Ex.P7/Salary Certificate, he has not examined the author of the document to prove the same. Hence, The Tribunal has rightly fixed monthly income of the appellant at Rs.6,500/- per month and awarded a sum of Rs.6,500 towards loss of income for a period of one month, which is not meagre. In any event, the amounts awarded by the Tribunal under other heads need not be enhanced with 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-

Insurance Company and perused the entire materials on record.

8. From the materials available on record, it is seen that the appellant has contended that he suffered fracture in the right leg ankle toe, injury over left forehead and multiple injuries all over the body. To substantiate the injuries sustained by him, the appellant has examined P.W.2/Doctor, who deposed about the nature of injuries and treatment taken by the appellant and assessed disability at 40%. The Tribunal has reduced the disability to 25% stating that P.W.2/Doctor has not filed any worksheet and guidelines for assessing the disability and awarded a sum Rs.75,000/- towards disability at the rate of Rs.3,000/- per percentage. The said reasoning given by the Tribunal is not correct. Considering the nature of injuries, evidence of P.W.2/Doctor and materials on record, the appellant is entitled to compensation for 40% disability at the rate of Rs.3,000/- per percentage. Thus, the amount awarded by the Tribunal towards disability is hereby enhanced to Rs.1,20,000/- (Rs.3,000/- x 40).

9. It is the contention of the appellant that he was working as an Agency Manager in Birla Sun Life Insurance and was earning a sum of Rs.18,500/- per month. To Substantiate his claim, he marked his salary certificate as Ex.P7. But he failed to examine the author of the said document, to prove the same. Hence, the Tribunal has rightly fixed monthly income of the appellant at Rs.6,500/- per month but awarded a meagre amount of Rs.6,500/- towards loss of income for a period of one month. The appellant took treatment in the hospital as in-patient from 19.10.2012 to 24.10.2012. Considering the nature of injuries and treatment, he would not have attended his work atleast for a period of six months. Hence, the amount of Rs.6,500/- awarded by the Tribunal is enhanced to Rs.39,000/- (Rs.6,500/- x 6months). From the award of the Tribunal it is seen that the Tribunal has awarded meagre sum of Rs.5,000/- towards extra nourishment, a sum of Rs.1,500/- towards attender charges, a sum of Rs.5,000/- towards future medical expenses and a sum of Rs.5,000/- towards loss of amenities. Hence, the same are hereby enhanced to Rs.10,000/- towards extra nourishment, Rs.10,000/- towards attender charges, Rs.10,000/- towards future medical expenses and Rs.10,000/- towards loss of amenities. The amounts granted by the Tribunal under the 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
1.	Disability	75,000/-	1,20,000/-	enhanced
2.	Pain and sufferings	25,000/-	25,000/-	confirmed
3.	Extra nourishment	5,000/-	10,000/-	enhanced
4.	Transportation	5,000/-	5,000/-	confirmed
5.	Damage to clothes	1,000/-	1,000/-	confirmed
6.	Attender charges	1,500/-	10,000/-	enhanced
7.	Medical expenses	24,500/-	24,500/-	confirmed
8.	Future medical expenses	5,000/-	10,000/-	enhanced
9.	Loss of income	6,500/-	39,000/-	enhanced
10.	Loss of amenities	5,000/-	10,000/-	enhanced
	Total	Rs.1,53,500/-	Rs.2,54,500/-	enhanced by Rs.1,01,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,53,500/- is hereby enhanced to Rs.2,54,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second 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 by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vkr

To

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

Copy To

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

+1cc to Mr.K.Varadha Kamaraj, Advocate in Sr.No.105739

+1cc to Mrs.R.Sree Vidhya, Advocate in Sr.No.105683

C.M.A.No.1201 of 2016

KK(CO)
CS/15/12/2020



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