



WEB COPY

1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2184 of 2015

Mani @ Villavamani

..Appellant/Petitioner

Vs.

1.E.Kithermuthu

2.Shriram General Insurance Company Limited

II floor, No.66

Thirumalai pillai road

T.Nagar, Chennai-600 017.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.02.2014 made in M.A.C.T.O.P.No.3683 of 2012 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Ms.A.Subadra for M/s.Malar

For R2 : Ms.K.Poomalai

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 03.02.2014 made in M.C.O.P.No.3683 of 2012 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

2.The appellant is claimant in M.C.O.P.No.3683 of 2012 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai. He filed the 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 17.04.2012. 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 Tata city vehicle belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said vehicle to pay a sum of Rs.95,150/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.



3. The learned counsel appearing for the appellant/claimant contended that the appellant has suffered tenderness over the right clavicle, unreduced dislocation of right AC joint, K wire was fixed and removed. Further the appellant has taken treatment as in-patient in the hospital from 28.06.2012 to 13.07.2012 for fixation of trans clavicular coracoids and subsequently, he has taken treatment in various hospitals. The Tribunal failed to consider the evidence of P.W.1 and P.W.3/Doctor, who deposed about the nature of injuries sustained by the appellant and erred in awarding a meagre sum of Rs.95,150/- as compensation as against the claim made by the appellant. P.W.3/Doctor assessed the disability of the appellant at 30% but without any reason, the Tribunal reduced the same to 20%. The appellant was a driver and due to the injuries sustained in the accident, he could not do the work as he was doing earlier. The Tribunal ought to have adopted multiplier method for awarding compensation towards disability. The amounts awarded by the Tribunal towards transportation, extra nourishment, medical expenses, pain & suffering are meagre. The Tribunal has not awarded any amount towards damage to clothes, attendant charges, mental agony, loss of amenities and future medical expenses and prayed for enhancement of compensation.

4. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not proved that he suffered functional disability. In view of the same, the Tribunal has awarded compensation towards disability by applying percentage method. The Tribunal after considering all the materials available on record in proper perspective, has awarded compensation, which is not meagre. The appellant has not made out any case for enhancement and prayed for dismissal of the appeal.

5. Heard the learned counsel appearing for the appellant as well as the 2nd respondent/Insurance Company and perused all the materials available on record.

6. From the materials available on record, it is seen that the appellant has contended that he was a driver and was earning a sum of Rs.12,000/- per month. The appellant has failed to substantiate the said contention. The Tribunal has awarded a sum of Rs.20,000/- towards loss of income. The accident is of the year 2012 and the loss of income awarded by the Tribunal is meagre. This Court fixes a sum of Rs.7,500/- as monthly income of the appellant and awards a sum of Rs.45,000/- (Rs.7,500/- X 6) towards loss of income for 6 months. P.W.3/Doctor assessed the disability of the appellant at 35%. The Tribunal reduced the same to 20% holding that X-ray was not filed and awarded a sum



of Rs.40,000/- (Rs.2,000/- X 20%) towards disability by awarding Rs.2,000/- per percentage, which is not proper. This Court fixes the disability of the appellant at 25%. The accident is of the year 2012. The appellant is entitled to compensation for Rs.3,000/- per percentage. The appellant has not proved that he suffered functional disability. The Tribunal has rightly applied percentage method for awarding compensation towards disability. The amount awarded by the Tribunal towards disability is modified to Rs.75,000/- (Rs.3,000/- X 25%) by awarding Rs.3,000/- per percentage. The amounts awarded by the Tribunal towards transportation, extra nourishment and pain & suffering are meagre and this Court enhances the same to Rs.10,000/-, Rs.20,000/- and Rs.25,000/- respectively. The appellant contended that he has taken treatment in the hospital as in-patient from 28.06.2012 to 13.07.2012 and 03.06.2013 to 15.06.2013. The Tribunal has not awarded any amount towards attendant charges, loss of amenities and damage to clothes and this Court awards a sum of Rs.15,000/-, Rs.20,000/- and Rs.2,000/- under those heads respectively. The amount awarded by the Tribunal towards medical expenses is just and reasonable and it 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	20,000	45,000	Enhanced
2.	Transportation	3,000	10,000	Enhanced
3.	Extra nourishment	5,000	20,000	Enhanced
4.	Medical expenses	12,152	12,152	Confirmed
5.	Pain and suffering	15,000	25,000	Enhanced
6.	Disability	40,000	75,000	Enhanced
7.	Attendant charges	-	15,000	Granted
8.	Loss of amenities	-	20,000	Granted
9.	Damage to clothes	-	2,000	Granted
	Total	95,152 rounded off to 95,150	2,24,152 rounded off to 2,24,150	Enhanced by Rs.1,29,000/-



7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.95,150/- is hereby enhanced to Rs.2,24,150/- together with interest at the rate of 6% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the entire 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 entire award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

Copy to : The Section Officer, V.R. Section,
High Court, Madras.

+1 cc to M/s.M.Malar, Advocate Sr.No.39214
+1 cc to M/s.K.Poomalai, Advocate Sr.No. 38709

AKM/11.11.19/4P-5C /

C.M.A.No.2184 of 2015