

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 2215 of 2015

R. Dhanasekar

.. Appellant/ Petitioner

Vs.

1.M. Babu

2.The New India Assurance Co. Ltd.,
Motor Third Party Claims,
45, Moore Street, V Floor,
Chennai 1.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 08.06.2015, made in M.C.O.P.No. 5516 of 2013, on the file of the Special Sub Court No. II, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. J. Ramkumar

For Respondents: Mr. J. Chandran (for R2)
R1-Exparte

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 08.06.2015, made in M.C.O.P.No. 5516 of 2013, on the file of the Special Sub Court No. II, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-claimant filed M.C.O.P.No. 5516 of 2013, on the file of the Special Sub Court No. II, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 21.09.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver-cum-owner of the car and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.4,10,000/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 08.06.2015, made in M.C.O.P.No. 5516 of 2013, the appellant has come out with the present appeal.

5. Learned counsel appearing for the appellant contended that the appellant was doing House Keeping work at M/s. Sun Facility Service Private Ltd., and earning a sum of Rs.15,000/- per month. In the accident, the appellant suffered fracture in both bones of right legs and several other injuries. P.W.2 Doctor assessed 45% disability and issued disability certificate, which is marked as Ex.P14. The Tribunal erroneously reduced the disability to 35% and awarded meagre amount towards disability. The Tribunal without considering the Salary slips marked as Ex.P3, erroneously fixed the monthly income of the appellant at Rs.6,500/- and granted very meagre amount towards loss of income. The Tribunal has not awarded any amount towards loss of future earning power and future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the nature of injury and the treatment taken by the appellant, holding that the assessment of percentage of disability by P.W.2 Doctor is on higher side, has reduced the same to 35% and awarded compensation towards disability. The Tribunal rightly taking into consideration Ex.P13 wherein the basic pay of the appellant is mentioned at Rs.6,500/-, has taken the same as monthly income and granted compensation towards loss of income. The same is not erroneous. The amounts awarded under different heads are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7. Heard learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

8. It is the contention of the appellant that due to the accident he sustained fracture of both bones of right leg and suffered 45% disability, which was assessed by P.W.2-Doctor. The Tribunal reduced the percentage of disability to 35% on the ground that the same is on the higher side. Considering the oral evidence of P.W.2-Doctor, X-rays and disability certificate marked as Exs.P8, P9 and P14, the percentage of disability suffered by the appellant is fixed at 45% and the amount granted by the Tribunal towards permanent disability is modified to Rs.1,35,000/- by awarding a sum of Rs.3,000/- per percentage for 45% disability. The appellant has taken treatment in MIOT

Hospital as in-patient for a period of 7 days and to substantiate the same, he has marked Ex.P6 - discharge summary. The Tribunal has granted meagre amount towards attendant charges. The appellant is entitled to a sum of Rs.10,000/- towards the same. Considering the nature of injuries and the treatment taken, the amount granted by the Tribunal under the head, extra nourishment is meagre. The same is enhanced to Rs.10,000/-. The appellant contended that he was working as a House Keeper in a private concern and earning a sum of Rs.15,000/- per month. The Tribunal erroneously fixed the salary of the appellant at Rs.6,500/- and granted a meagre amount towards loss of income for a period of three months. Considering Ex.P13, salary certificate and the nature of the work, the monthly income of the appellant is fixed at Rs.8,000/-. Due to the fracture and the injuries sustained, the appellant would not have worked atleast for a period of four months. The accident is of the year 2013. Hence, he is entitled to a sum of Rs.32,000/- towards loss of income for a period of four months. It is the contention of the learned counsel appearing for the appellant that the Tribunal has not awarded any amount towards future medical expenses. The appellant has not proved that he requires further treatment. In the absence of any material evidence, the Tribunal has not awarded any amount towards future medical expenses. The said reasoning is proper and hence, the appellant is not entitled for the same. The amounts awarded by the Tribunal under different heads are just and reasonable and hence, the same are 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.	Partial permanent disability	1,05,000/-	1,35,000/-	Enhanced
2.	Pain and suffering	50,000/-	50,000/-	Confirmed
3.	Extra nourishment	5,000/-	10,000/-	Enhanced
4.	Attendant charges	5,000/-	10,000/-	Enhanced
5.	Medical expenses	1,49,000/-	1,49,000/-	Confirmed
6.	Loss of future prospects	30,000/-	30,000/-	Confirmed

7.	Loss of amenities	40,000/-	40,000/-	Confirmed
8.	Loss of earning for 3 months	20,000/-	32,000/-	Enhanced
9.	Transportation	6,000/-	6,000/-	Confirmed
	Total	4,10,000/-	4,62,000/-	Enhanced by Rs.52,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.4,10,000/- is enhanced to Rs.4,62,000/- along with interest and costs. The 2nd respondent Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No. 5516 of 2013. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gsa
To

1.The II Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Chennai.

2.The Section Officer,
V.R Section, High Court, Madras.

+1cc to Mr.S.Makesh , Advocate SR.No. 103694

+1cc to Mr.J. Chandran , Advocate SR.No. 103332

C.M.A.No. 2215 of 2015

SR co
A.SK(06/10/2020)