

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2019

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2280 of 2012

A.Kumarael

.. Appellant/petitioner

Vs.

1.K.S.Dhanyakumar

2.The Royal Sundaram Alliance Insurance

Company Limited,

No.21, Patullas Road,

Chennai 600 002.

.. Respondents/Respondents

(1<sup>st</sup> respondent remained exparte before the Tribunal)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 06.03.2012 made in M.C.O.P.No.3865 of 2009 on the file of the Motor Accident Claims Tribunal, VI Judge, Court of Small Causes, Chennai.

For Appellant : Ms.P.T.Salim Fathima

For Respondents : Mr.E.Rajadurai for  
Mr.N.Vijayaraghavan for R2  
R1-Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 06.03.2012 made in M.C.O.P.No.3865 of 2009 on the file of the Motor Accident Claims Tribunal, VI Judge, Court of Small Causes, Chennai.

2.The appellant is the claimant in M.C.O.P.No.3865 of 2009 on the file of the Motor Accident Claims Tribunal, VI Judge, Court of Small Causes, Chennai. He filed the above said claim petition, claiming a sum of Rs.16,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.07.2009.

3.The case of the appellant is that on 26.07.2009 at about 16.35 hours, while the appellant was working as conductor in a bus bearing Registration No. TN 21 AD 3799 from Kammarpalayam to Maduranthagam road, near Nelvai Kutt road was driven by its driver in a rash and negligent manner, took a right turn and applied sudden brake, due to which, the appellant fell down from the bus and sustained multiple fracture and injuries.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the bus belonging to the first respondent and directed the second respondent being insurer of the bus to pay a sum of Rs.1,54,857/- as compensation to the appellant/claimant.

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

6.The learned counsel appearing for the appellant contended that the appellant was aged 31 years at the time of the accident and was working as a conductor and was earning a sum of Rs.1,500/- per month as salary and collection batta around Rs.400/- per day and bonus allowance etc. Due to the multiple injuries and fractures sustained in the accident, the appellant could not do his work for a period of three months and the Tribunal fixed only a meagre sum of Rs.4,500/- as monthly income and granted a sum of Rs.4,500/- towards loss of income for a period of one month. The appellant has taken treatment in the hospital as in-patient from 26.07.2009 to 31.07.2009 and Ex.P2/ Discharge summary issued by Apollo First Med Hospital shows that the appellant sustained traumatic right frontal contusion, diffuse cerebral oedema and soft tissue injury and Ex.P5/ Disability Certificate shows that the appellant suffered 35% disability. The Tribunal reduced the percentage of disability to 25% on the ground that the disability assessed by PW.2/Doctor is slightly on the higher side and awarded compensation of Rs.50,000/- towards disability at the rate of Rs.2,000/- per percentage. The Tribunal has failed to award any amount towards loss of amenities and loss of expectation of life. The amounts awarded by the Tribunal under different heads are also meagre and prayed for enhancement of compensation.

7.Per contra, learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal rightly reduced the percentage of disability from 35% to 25% on the ground that the Doctor who assessed the percentage of disability of the appellant is on the higher side. The appellant failed to prove the income. In the absence of any material evidence, the Tribunal has rightly fixed monthly income of the appellant at Rs.4,500/- and awarded a sum of Rs.4,500/- 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 are excessive and prayed for dismissal of the appeal.

8. 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.

9. From the materials available on record, it is seen that the appellant sustained traumatic right frontal contusion, diffuse cerebral oedema and soft tissue injury. The appellant has produced Ex.P5/disability certificate issued by Doctor to show that he suffered 35% disability and the Tribunal reduced the same to 25%, on the ground that the disability assessed by PW.2/Doctor is on the higher side. The Tribunal has fixed the disability at 25% and awarded Rs.50,000/- towards disability at the rate of Rs.3,000/- per percentage. The reason given by the Tribunal for reducing the percentage of disability is proper. Considering the nature of injuries and percentage of disability assessed by the PW.2/Doctor, the appellant is entitled to a sum of Rs.75,000/- (25% x Rs.3,000/-) for 25% disability at the rate of Rs.3,000/- per percentage. The appellant has not produced any material evidence to prove that he was working as a conductor and was earning a sum of Rs.1,500/- per month as salary, collection batta around Rs.400/- per day and bonus allowance etc. In the absence of material evidence, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the appellant and the same is proper. Due to the injuries, the appellant would not have worked at least for a period of three months. Hence, the amount awarded by the Tribunal is enhanced to Rs.13,500/- (Rs.4,500/- x 3 months). 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 |
|-------|-------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Loss of income    | 4,500/-                         | 13,500/-                          | Enhanced                               |
| 2.    | Transportation    | 5,000/-                         | 5,000/-                           | Confirmed                              |
| 3.    | Extra nourishment | 5,000/-                         | 5,000/-                           | Confirmed                              |
| 4.    | Damage to clothes | 1,000/-                         | 1,000/-                           | Confirmed                              |
| 5.    | Medical expenses  | 69,357/-                        | 69,357/-                          | Confirmed                              |

|    |                   |               |               |                         |
|----|-------------------|---------------|---------------|-------------------------|
| 6. | Pain & sufferings | 20,000/-      | 20,000/-      | Confirmed               |
| 7. | Disability        | 50,000/-      | 75,000/-      | Enhanced                |
|    | Total             | Rs.1,54,857/- | Rs.1,88,857/- | enhanced by Rs.34,000/- |

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,54,857/- is enhanced to Rs.1,88,857/- along with interest and costs. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. 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. No costs.

Sd/-  
Asst.Registrar (CS III )

/true copy/  
Sub Asst. Registrar

vkrr

To

1. The VI Judge,  
The Motor Accidents Claims Tribunal/  
Court of Small Causes,  
Chennai.

Copy to

The Section Officer  
VR Section,  
High Court of Madras.

+1 cc to Ms.P.T.Saleem Fathima Advocate sr103704  
+1 cc to Mr.N.Vijayaraghavan Advocate sr104602

C.M.A.No.2280 of 2012

ak(co)  
aa15/12/2020



WEB COPY