

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2408 of 2015

Sivalingam

.. Appellant/Petitioner

Vs.

1.S.Vinoth Kannan

2.Cholamandalam MS General

Insurance Company Ltd.,

Dare House, IInd Floor, N.S.C.Bose Road,

Chennai - 600 001.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.04.2014 made in M.C.O.P.No.285 of 2009 on the file of Motor Accidents Claims Tribunal, Special Sub Court No.II, Chennai.

For Appellant : Mr.N.Suresh

For R2 : Mrs.C.Harini for
Mr.N.Vijayaraghavan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 30.04.2014 made in M.C.O.P.No.285 of 2009 on the file of Motor Accidents Claims Tribunal, Special Sub Court No.II, Chennai.

2.The appellant is the claimant in M.C.O.P.No.285 of 2009 on the file of Motor Accidents Claims Tribunal, Special Sub Court No.II, Chennai. He filed the above said claim petition, claiming a sum of Rs.3,62,500/- as compensation for the injuries sustained by him in the accident that took place on 11.10.2008.

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 JCB vehicle

belonging to the first respondent and directed the second respondent-Insurance Company to pay a sum of Rs.2,30,000/- as compensation to the appellant at the first instance and recover the same from the first respondent.

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 contended that the appellant was working as a lorry driver and was earning a sum of Rs.10,000/- per month and Rs.300/- per day as batta. To prove the same, he produced Ex.P9/salary certificate. The Tribunal erroneously fixed a meager sum of Rs.6,000/- as monthly income of the appellant. P.W.2/Doctor assessed the percentage of disability suffered by the appellant at 50%. The Tribunal reduced the same to 30% on the ground that assessment of disability by P.W.2/Doctor is on higher side. The compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the salary certificate produced by the appellant as Ex.P9 is entirely against the averments made by the appellant. In the absence of material evidence, the Tribunal fixed a sum of Rs.6,000/- as monthly income of the appellant, which is not meager. The Tribunal rightly reduced the percentage of disability suffered by the appellant from 50% to 30% on the ground that assessment of disability by P.W.2/Doctor is definitely on higher side. The amounts awarded by the Tribunal under different heads are not meager and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the second respondent and perused the entire materials on record.

8. From the materials available on record it is seen that the appellant has contended that he was working as a lorry driver and was earning a sum of Rs.10,000/- per month and Rs.300/- per day as batta. To prove the same, the appellant produced Ex.P9/salary certificate. The Tribunal rejected the same on the ground that Ex.P9 is entirely against the averments made by the appellant and fixed a sum of Rs.6,000/- as monthly income of the appellant. The accident occurred in the year 2008 and the monthly income fixed by the Tribunal is meager. A sum of Rs.8,000/- is fixed by this Court as monthly income of the appellant. Due to the injuries and disability, the appellant

would not have attended his work atleast for a period of six months. The compensation awarded by the Tribunal towards loss of income is modified to Rs.48,000/- [Rs.8,000/- X 6]. P.W.2/Doctor assessed the percentage of disability suffered by the appellant at 50% and the Tribunal reduced the same to 30% on the ground that assessment of disability by P.W.2/Doctor is on higher side. The said reason given by the Tribunal for reducing the percentage of disability is not proper. The appellant is entitled to compensation towards 50% disability at the rate of Rs.3,000/- per percentage. The compensation awarded by the Tribunal towards disability is modified to Rs.1,50,000/- [Rs.3,000/- X 50]. The appellant has taken treatment in the hospital as in-patient from 11.10.2008 to 19.10.2008 and the Tribunal has awarded a sum of Rs.7,000/- towards attendant charges, which is meager and the same is hereby enhanced to Rs.10,000/-. The compensation awarded by the Tribunal under other heads 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.	Disability	90,000/-	1,50,000/-	Enhanced
2.	Pain and sufferings	30,000/-	30,000/-	Confirmed
3.	Loss of income	24,000/-	48,000/-	Enhanced
4.	Transportation	10,000/-	10,000/-	Confirmed
5.	Extra nourishment	10,000/-	10,000/-	Confirmed
6.	Attendant charges	7,000/-	10,000/-	Enhanced
7.	Loss of future prospects and amenities	50,000/-	50,000/-	Confirmed
8.	Medical expenses	9,000/-	9,000/-	Confirmed
	Total	Rs.2,30,000/-	Rs.3,17,000/-	enhanced by Rs.87,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,30,000/- is hereby enhanced to Rs.3,17,000/- 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 at the first instance and recover the same from the first respondent, together 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 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. The appellant is directed to pay the Court fee, if any for the enhanced award amount now determined by this Court. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1.The Special Sub Judge No.II,
Motor Accidents Claims Tribunal,
Chennai.

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

+3cc to Mr.N.Suresh, Advocate SR.No.40527

+1cc to Mr.N.Vijayaraghavan, Advocate SR.No.41464

C.M.A.No.2408 of 2015

GP(CO)
GMY(05/08/2019)

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