

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.304 of 2015

C.Subbarayalu

.. Appellant/Petitioner

Vs.

1.N.Ramesh Kumar

2.Shriram General Insurance Company Limited,
No.66, Shriram Genera Inside City Centre Complex,
Syed Thirumallai Pillai Road,
T.Nagar, Chennai - 600 017. .. Respondents/Respondents

(R1 set exparte in the Trial Court)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.09.2014 made in M.C.O.P.No.5472 of 2013 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.P.T.Salim Fathima
For R2 : Mr.S.Dhakshnamoorthy
For R1 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 24.09.2014 made in M.C.O.P.No.5472 of 2013 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.5472 of 2013 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, 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 25.08.2013.

3.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 car belonging to the first respondent and directed the second

respondent-Insurance Company to pay a sum of Rs.3,58,000/- as compensation to the appellant/claimant.

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 Tribunal without considering the evidence on record, awarded meager amount of Rs.3,58,000/- as compensation. The appellant has taken treatment in the hospital as in-patient on two occasions from 25.08.2013 to 06.09.2013 and also subsequently from 08.09.2013 to 09.09.2013 and P.W.3/Doctor assessed partial permanent disability of the appellant at 40% and the Tribunal ought to have applied multiplier method instead of percentage method for awarding compensation towards disability. The appellant was aged 52 years and was working as Binding Contractor and was earning a sum of Rs.20,000/- to Rs.25,000/- per month. The Tribunal erroneously fixed a sum of Rs.7,000/- as monthly income and granted meager amount of Rs.42,000/- towards loss of income. The Tribunal has not granted any amount towards future medical expenses. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

6. Per contra, Mr.S.Dhakshnamoorthy, learned counsel appearing for the second respondent-Insurance Company contended that the appellant is not entitled to compensation by applying multiplier method as he has not proved that he suffered functional disability. Hence, the Tribunal rightly applied percentage method for granting compensation towards disability. The appellant has not proved the avocation and income and therefore the Tribunal has rightly fixed monthly income of the appellant at Rs.7,000/- which is not meager. The total compensation 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 suffered multiple injuries and has taken treatment in the hospital as in-patient on two occasions from 25.08.2013 to 06.09.2013 and also subsequently from 08.09.2013 to 09.09.2013. P.W.3/Doctor has certified that appellant suffered 40% partial permanent disability. However, the appellant has not produced any material evidence to show that he suffered functional disability and he could not do any work as he was doing earlier. Therefore, the appellant is not entitled to compensation towards disability by applying multiplier method. The Tribunal accepting the disability certificate issued by P.W.3/Doctor has awarded compensation for 40% disability at the rate of Rs.2,000/- per percentage. The

accident is of the year 2013 and a sum of Rs.2,000/- per percentage fixed by the Tribunal is meager. Thus, a sum of Rs.3,000/- per percentage is fixed by this Court and the compensation awarded by the Tribunal towards disability is hereby enhanced to Rs.1,20,000/- [Rs.3,000/- X 40]. The appellant was aged 52 years and was working as Binding Contractor and was earning Rs.20,000/- to Rs.25,000/- per month. Except oral evidence, no document was filed by the appellant to prove his avocation and income. In the absence of any material evidence to prove the avocation and income, a sum of Rs.7,000/- is fixed by the Tribunal as monthly income of the appellant. The accident occurred in the year 2013 and the monthly income fixed by the Tribunal is meager. Therefore, a sum of Rs.10,000/- is fixed by this Court as monthly income of the appellant. Considering the nature of injuries and disability suffered by the appellant, the appellant would not have worked atleast for a period of eight months. Thus, the compensation awarded by the Tribunal towards loss of income is hereby enhanced to Rs.80,000/- [Rs.10,000/- X 8]. The learned counsel for the appellant contended that the Tribunal has not granted any amount towards future medical expenses. Since the appellant failed to produce any document to prove the future medical expenses, he is not entitled for the same. The amounts awarded by the Tribunal under other heads are reasonable and they 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.	Loss of income	42,000/-	80,000/-	Enhanced
2.	Disability	80,000/-	1,20,000/-	Enhanced
3.	Extra nourishment	15,000/-	15,000/-	Confirmed
4.	Transportation	10,000/-	10,000/-	Confirmed
5.	Damage to clothes	1,000/-	1,000/-	Confirmed
6.	Medical expenses	1,25,000/-	1,25,000/-	Confirmed
7.	Attendant charges	15,000/-	15,000/-	Confirmed
8.	Pain and sufferings	40,000/-	40,000/-	Confirmed
9.	Loss of amenities	30,000/-	30,000/-	Confirmed
	Total	Rs.3,58,000/-	Rs.4,36,000/-	enhanced by Rs.78,000/-

9. In the result, this Civil Miscellaneous Appeal is partly

allowed and the compensation awarded by the Tribunal at Rs.3,58,000/- is hereby enhanced to Rs.4,36,000/- 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 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, to the credit of M.C.O.P.No.5472 of 2013 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. 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. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk

To

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

Copy to:
The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.M.Swamikkannu, Advocate, S.R.No.100811

+1cc to Mr.S.Dhakshnamoorthy, Advocate, S.R.No.100634

सत्यमेव जयते

C.M.A.No.304 of 2015

NR(CO)
CB(27/07/2020)

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