

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.1704 OF 2016

Mubharak

.. Appellant/Petitioner

Vs.

1. M/s.A.R.C. Parcel Service Pvt. Ltd.,
No.504/2-B, New Seerapalayam Village,
Pollachi Main Road, Eachanari,
Coimbatore 641 021.
 2. New India Assurance Co. Ltd.,
No.45, Moore Street, V Floor,
Chennai 600 001.
- .. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 28.01.2016, made in M.C.O.P.No. 7594 of 2013, on the file of the IV Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Ms.A.Subadra

For Respondents: Mr.G.Udaya Sankar (for R2)
R1 - Exparte

J U D G M E N T

This appeal has been filed seeking enhancement of the compensation granted by the award dated 28.01.2016, made in M.C.O.P.No. 7594 of 2013, on the file of the IV Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-claimant filed M.C.O.P.No. 7594 of 2013, on the file of the IV Court of Small Causes, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.8,00,000/- 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 driver of the bus belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.2,02,500/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 28.01.2016, made in M.C.O.P.No. 7594 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. Dhoshia Automotive Company and was earning a sum of Rs.9,000/- per month. In the accident, the appellant suffered fracture of left clavicle, fracture of left humerus shaft, fracture of left maxillary sinus, fracture in the nasal bone and several other injuries. He underwent surgery by implanting plate with screws. P.W.2 Doctor assessed 90% disability. The Tribunal without considering the deposition of P.W.2-Doctor, reduced the percentage of disability to 35% and awarded meagre amount towards disability. The Tribunal ought to have awarded compensation under the head, loss of earning capacity by adopting multiplier method. 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 in the absence of any reason given by P.W.2-Doctor for fixing 90% disability, holding that the assessment of Doctor is on higher side, reduced the same to 35% and awarded compensation towards disability. In the absence of any evidence to prove the avocation and income of the appellant, the Tribunal has rightly fixed the notional income at Rs.6,500/- per month and granted compensation towards loss of income. The same is not meagre. 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 multiple fractures and P.W.2 - Doctor assessed 90% disability. The Tribunal taking note of the fact that there is no serious abnormalities as evident from the deposition of the appellant as P.W.1, held that the percentage of disability assessed by the Doctor is on higher side and rightly reduced the same to 35%. The reason given by the

Tribunal is not erroneous. From the records, it is seen that the appellant took treatment as in-patient in Government Medical College Hospital, Chengalpattu, from 22.09.2013 to 05.10.2013, for a period of 14 days. The amounts awarded by the Tribunal towards attendant charges is meagre. Considering the period of treatment taken, the appellant is entitled to a sum of Rs.15,000/- towards attendant charges. Due to the fracture and injuries sustained, the appellant would not have worked atleast for a period of six months. The Tribunal erroneously granted compensation towards loss of income for only three months. The same is meagre. The appellant is entitled to a sum of Rs. 39,000/-, by awarding a sum of Rs.6,500/- per month. Considering the nature of injuries and the treatment taken, the amount awarded by the Tribunal under the head, extra nourishment is meagre. Hence, the same is enhanced to Rs.20,000/-. The amounts awarded by the Tribunal under other 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.	Disability	1,05,000/-	1,05,000/-	Confirmed
2.	Pain and suffering	50,000/-	50,000/-	Confirmed
3.	Extra nourishment	5,000/-	20,000/-	Enhanced
4.	Attendant charges	3,500/-	15,000/-	Enhanced
5.	Medical expenses	5,000/-	5,000/-	Confirmed
6.	Future medical expenses	5,000/-	5,000/-	Confirmed
7.	Loss of amenities	10,000/-	10,000/-	Confirmed
8.	Loss of income	13,000/-	39,000/-	Enhanced
9.	Transportation	5,000/-	5,000/-	Confirmed
10.	Damages to clothes	1,000/-	1,000/-	Confirmed
	Total	2,02,500/-	2,55,000/-	Enhanced by Rs.52,500/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.2,02,500/- is enhanced to

Rs.2,55,000/- along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount 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. 7594 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(MD)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Judge,
IV Court of Small Causes,
(Motor Accident Claims Tribunal),
Chennai.
2. The Section Officer,
V.R Section,
High Court, Madras.

+1cc to M/s.M.Malar, Advocate, S.R.No.105432

C.M.A.No.1704 of 2016

BR(CO)
CS/22/10/2020

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