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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1417 of 2019

Vijayakumar @ Mahendiran

.. Appellant/Petitioner

Vs.

1.R.S.Sreedevi

(R1 remained exparte before Tribunal)

2.The New India Assurance Company Limited,
Justice Basheer Ahmed Building 5th floor,
No.45, Moore Street,
Chennai - 600 001.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 25.06.2018 made in M.C.O.P.No.6805 of 2015 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.C.Richard Sureshkumar

For R2 : Mr.Thirunavukkarasu

For R1 : Exparte before the Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 25.06.2018 made in M.C.O.P.No.6805 of 2015 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.6805 of 2015 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 16.01.2013.

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 car belonging to the first respondent and directed the second respondent-Insurance Company to pay a sum of Rs.2,25,400/- as compensation to the appellant.

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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 suffered malunion and fracture in the left leg in the accident. The Tribunal failed to consider that appellant had already lost his hand in a train accident and due to the fracture, he could not continue his work as security guard. The Tribunal ought to have applied multiplier method and granted compensation. The appellant examined P.W.3/Doctor to prove the nature of injuries and disability suffered by him. The Tribunal erroneously reduced the percentage of disability from 50% to 25%. 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 appellant has not suffered functional disability. The Tribunal considering the nature of injuries, treatment taken, evidence of P.W.2 and P.W.3, Doctors, reduced the percentage of disability to 25% and granted compensation on the ground that P.W.3/Doctor has not enclosed guidelines as to how he arrived the percentage of disability. The total compensation awarded by the Tribunal under different heads are not meagre and the appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

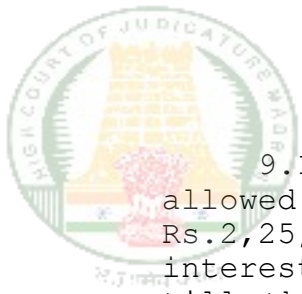
7. I have heard the learned counsel appearing for the appellant as well as the second respondent-Insurance Company and perused the entire materials on record.

8. From the materials available on record it is seen that the appellant has contended that he sustained multiple injuries and fracture in the left leg. A surgery was conducted and plates were implanted. The appellant contended that due to the fracture he is not able to do the security job, as he was doing earlier. The appellant examined P.W.2 and P.W.3, Doctors, who deposed about the nature of injuries, treatment taken and P.W.3/Doctor has assessed that the appellant suffered 50% disability. The Tribunal reduced the percentage of disability from 50% to 25% on the ground that P.W.3/Doctor did not enclose guidelines as to how he arrived at the percentage of disability. The said reason given by the Tribunal for reducing the percentage of disability



is erroneous. The appellant has not proved that he suffered functional disability and lost his job and he is out of employment. In view of the same, the appellant is not entitled to compensation by adopting multiplier method. The appellant is entitled to compensation towards 50% disability as assessed by P.W.3/Doctor 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 for 8 days and the Tribunal has granted only a sum of Rs.4,000/- towards attendant charges, which is meagre and the same is hereby enhanced to Rs.10,000/-. Considering the nature of injuries and treatment taken by the appellant, a sum of Rs.30,000/- granted by the Tribunal towards loss of amenities is hereby enhanced to Rs.50,000/-. The Tribunal has granted a sum of Rs.10,000/- towards transportation and extra nourishment, which is meagre and the same is modified as the appellant is entitled to a sum of Rs.10,000/- towards transportation and Rs.20,000/- towards extra nourishment. The Tribunal has not granted any amount towards loss of cloth. A sum of Rs.2,000/- is granted by this Court towards loss of cloth. The amounts 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.	Transportation and extra nourishment	10,000/-	10,000/- and 20,000/-	Enhanced
2.	Attendant charges	4,000/-	10,000/-	Enhanced
3.	Medical expenses	6,345/-	6,345/-	Confirmed
4.	Disability	75,000/-	1,50,000/-	Enhanced
5.	Loss of earning power	50,000/-	50,000/-	Confirmed
6.	Pain and suffering and trauma	50,000/-	50,000/-	Confirmed
7.	Loss of amenities	30,000/-	50,000/-	Enhanced
8.	Loss of cloth	-	2,000/-	Granted
	Total	Rs.2,25,345/- rounded off to Rs.2,25,400/-	Rs.3,48,345/- rounded off to Rs.3,48,400/-	enhanced by Rs.1,23,000/-



9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,25,400/- is hereby enhanced to Rs.3,48,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the Court fee, if any on the enhanced amount of compensation. The second respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court, 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. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

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

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

+1cc to Mr.C.Richard Sureshkumar, Advocate SR.No.36030

C.M.A.No.1417 of 2019

NRJK (CO)
GMY (06/09/2019)