

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.96 of 2015

G.Krishnan

.. Appellant

Vs.

1.V.Vikranth

2.The New India Ass.Co.Ltd.,
No.1090, Poonamallee High Road
Periamet, Chennai.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.09.2014 made in M.C.O.P.No.958 of 2009 on the file of Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai.

For Appellant : Mr.T.G.Balachandran

R1 : Dispensed with vide Court
order dated 21.02.2019

For R2 : Mr.M.Krishnamoorthy

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 16.09.2014 made in M.C.O.P.No.958 of 2009 on the file of Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai.

2.The appellant is claimant in M.C.O.P.No.958 of 2009 on the file of Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai. He filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 09.03.2009. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the 1st respondent/rider of the two wheeler and directed the

2nd respondent/Insurance Company being insurer of the said two wheeler to pay a sum of Rs.2,64,004/- as compensation to the appellant.

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

4. The learned counsel appearing for the appellant/claimant contended that the appellant has suffered fracture of ribs and left tibia and movements of the left leg & right shoulder are reduced and he has difficulty in breathing. The appellant took treatment as in-patient in the hospital from 09.03.2009 to 12.03.2009. P.W.2/Dr.Saichandran was examined to prove the disability suffered by the appellant and he assessed 65% disability. The appellant was working as a mason and due to the accident, he could not do the work as he was doing earlier. The Tribunal awarded a sum of Rs.1,800/- per percentage of disability, which is meagre. The Tribunal ought to have adopted multiplier method while awarding compensation towards disability. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

5. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not proved that he suffered functional disability. P.W.2/Doctor has not deposed that due to the accident, the appellant suffered loss of earning capacity and he cannot do the work as he was doing earlier. In the absence of evidence, multiplier method cannot be adopted for awarding compensation. The Tribunal after considering the materials available on record, has awarded compensation, which is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and perused all the materials available on record.

7. From the materials available on record, it is seen that according to the appellant, he was aged 56 years and was working as a mason and was earning a sum of Rs.7,000/- per month approximately. Due to the accident, the appellant has suffered fracture of left tibia, fibula and ribs. In the absence of any evidence, the Tribunal has fixed a sum of Rs.6,000/- as monthly income of the appellant and awarded a sum of Rs.30,000/- (Rs.6,000/- X 5) towards loss of income for five months. Considering the nature of injuries sustained by the appellant, the amount awarded by the Tribunal towards loss of income is meagre. The accident has occurred in the year 2009 and the monthly income fixed by the Tribunal is also meagre. This Court

fixes a sum of Rs.6,500/- per month as income of the appellant and awards a sum of Rs.39,000/- (Rs.6,500/- X 6) towards loss of income for six months. PW.2/Doctor has assessed the disability of the appellant at 65%. The appellant has not proved that he suffered functional disability and there is loss of earning capacity. In the absence of any evidence, the Tribunal has accepted the disability assessed by the doctor and awarded a sum of Rs.1,17,000/- towards disability by awarding Rs.1,800/- per percentage of disability. The amount awarded by the Tribunal per percentage of disability is meagre. This Court awards a sum of Rs.1,30,000/- (Rs.2,000/- X 65%) towards disability by awarding a sum of Rs.2,000/- per percentage of disability. The appellant took treatment as in-patient in the hospital from 09.03.2009 to 12.03.2009. The Tribunal has not granted any amount towards attendant charges. Considering the period of treatment taken by the appellant, this Court awards a sum of Rs.5,000/- towards attendant charges. A sum of Rs.10,000/-, Rs.500/- and Rs.5,000/- awarded by the Tribunal towards extra nourishment, damage to clothes and loss of amenities are meagre and the same are hereby enhanced to Rs.20,000/-, Rs.1,000/- and Rs.15,000/- respectively. The amounts awarded by the Tribunal under all the other heads are just and reasonable and the same 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 or reduced
1.	Loss of income	30,000	39,000	Enhanced
2.	Transport to hospital	10,000	10,000	Confirmed
3.	Extra nourishment	10,000	20,000	Enhanced
4.	Damages to clothing	500	1,000	Enhanced
5.	Medical expenses	51,504	51,504	Confirmed
6.	Loss of amenities	5,000	15,000	Enhanced
7.	Pain and suffering	40,000	40,000	Confirmed
8.	Permanent disability	1,17,000	1,30,000	Enhanced

9.	Attendant charges	-	5,000	Granted
	Total	2,64,004	3,11,504	Enhanced by Rs.47,500/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,64,004/- is hereby enhanced to Rs.3,11,504/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. The 2nd 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/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

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

2. The Section Officer
V.R. Section
High Court, Chennai.

+1cc to Mr.T.G.Balachandran, Advocate SR.No.100685

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.100815

C.M.A.No.96 of 2015

GP (CO)
GMY (11/11/2020)