

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.212 of 2016

J.Surendar

.. Appellant/ Petitioner

Vs.

1.V.Selvaraj

2.National Insurance Co. Ltd.

No.751, Anna salai

Chennai-600 002.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.06.2015 made in M.C.O.P.No.22 of 2011 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II (dealing with M.C.O.P. cases), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R1 : No appearance

For R2 : Mr.J.Chandran

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 10.06.2015 made in M.C.O.P.No.22 of 2011 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II (dealing with M.C.O.P. cases), Chennai.

2.The appellant is claimant in M.C.O.P.No.22 of 2011 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II (dealing with M.C.O.P. cases), 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 22.04.2010. 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, owner-cum-

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.3,00,000/- 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 P.W.2/Doctor has assessed the disability of the appellant at 50% and when there is no contra evidence on the part of the respondents, the Tribunal ought to have fixed the disability of the appellant at 50% instead of 40%. The appellant was aged 19 years at the time of accident. He has sustained grievous injuries and underwent surgery. The Tribunal without considering the same, has not awarded any amount towards future medical expenses, disfiguration and loss of earning power. 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 P.W.2 is not the doctor who treated the appellant and the appellant was treated only with conservative treatment for all the injuries. The Tribunal after considering the materials available on record, has awarded just 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. Though notice was served on the 1st respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

7. 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.

8. From the materials available on record, it is seen that the appellant has contended that he sustained blunt trauma abdomen with contusion, laceration of right lobe of liver with undisplaced metaphyseal, fracture of tibia, fracture of both bones of right leg and multiple injuries all over the body. P.W.2/Doctor has assessed the disability of the appellant at 50%. The Tribunal has reduced the same to 40% holding that P.W.2 is not the doctor, who treated the appellant and since the appellant was minor at the time of accident, the fractured bones might have been united in a perfect manner. The reason given by the Tribunal is not proper. The respondents have not let in any

evidence to disprove the contention of the appellant. Hence, the appellant is entitled to compensation for 50% disability. The Tribunal has awarded a sum of Rs.3,000/- per percentage of disability, which is proper. A sum of Rs.1,50,000/- (Rs.3,000/- X 50%) is awarded towards permanent disability. The appellant has contended that he took treatment in C.M.O.Global hospital and Health City, Chennai, as in-patient on 22.04.2010 and 23.04.2010 for two days and thereafter in Government Stanley Hospital, Chennai, from 23.04.2010 to 15.05.2010 and subsequently, continued treatment as out-patient. A sum of Rs.5,000/- and Rs.10,000/- awarded by the Tribunal towards extra nourishment and attendant charges are meagre. Considering the period of treatment taken by the appellant, a sum of Rs.25,000/- and Rs.20,000/- is awarded towards extra nourishment and attendant charges. Though the appellant has contended that the Tribunal ought to have awarded compensation towards disfiguration, future medical expenses and loss of earning power, the appellant has not substantiated the same by marking any documents and hence, he is not entitled for the same. The amounts awarded by the Tribunal under 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.	Permanent disability	1,20,000	1,50,000	Enhanced
2.	Pain and suffering	50,000	50,000	Confirmed
3.	Transportation	10,000	10,000	Confirmed
4.	Extra nourishment	5,000	25,000	Enhanced
5.	Attendant charges	10,000	20,000	Enhanced
6.	Loss of future prospects	40,000	40,000	Confirmed
7.	Loss of amenities	35,000	35,000	Confirmed
8.	Medical expenses	5,000	5,000	Confirmed

9.	Mental agony to the parents	25,000	25,000	Confirmed
	Total	3,00,000	3,60,000	Enhanced by Rs.60,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,00,000/- is hereby enhanced to Rs.3,60,000/- 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)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Subordinate Judge-II
Motor Accident Claims Tribunal
Chennai.

2. The Section Officer
V.R. Section

High Court, Chennai. सत्यमेव जयते

+1cc to Mr.K.Varadarkamaraj, Advocate SR.No. 103873

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A.SK(16.04.2021)

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