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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2373 of 2016

R.Ravichandran ... Appellant /Claimant

Vs.

1.S.Viswanath

2.The Oriental Insurance Company Ltd,
No.115, Broadway,
Chennai - 600 108.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.02.2016 made in M.C.O.P.No.7731 of 2013 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.K.Varadha Kamaraj
for Mr.B.S.Padmanabhan

For R1 : No appearance

For R2 : Mr.D.Bhaskaran

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 22.02.2016 made in M.C.O.P.No.7731 of 2013 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

2.The appellant is claimant in M.C.O.P.No.7731 of 2013 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai. He filed the said claim petition claiming a sum of Rs.7,50,000/- as compensation for the injuries sustained by him in the accident that took place on 27.09.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said lorry to



pay a sum of Rs.1,75,750/- as compensation to the appellant.

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

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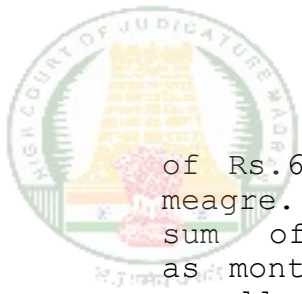
5. The learned counsel appearing for the appellant/claimant contended that in the accident, the appellant sustained injuries and suffered 45% disability. To prove the same, he examined PW2 / Doctor. However, the Tribunal reduced the disability to 30% without giving any reason. Due to the injuries, the appellant has lost sensory on his right forearm, difficult to raise the hand above head, lift weight more than 1 kilogram, he could not hold objects firmly with grip and could not drive the car. The Tribunal ought to have awarded compensation towards loss of earning power as 100%. The appellant was a car driver and was earning a sum of Rs.15,000/- per month. The Tribunal without considering the same, has fixed only a meagre sum of Rs.6,500/- as monthly income of the appellant. The appellant took treatment as in-patient in the hospital for more than 21 days. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that though PW2 / Doctor has assessed the disability of the appellant as 45%, to substantiate the same, he has not filed any worksheet and guidelines. Therefore, the Tribunal has rightly fixed the disability of the appellant as 30%. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal has fixed a sum of Rs.6,500/- as his monthly income and the same is not meagre. The Tribunal after considering all 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.

7. 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.

8. 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.

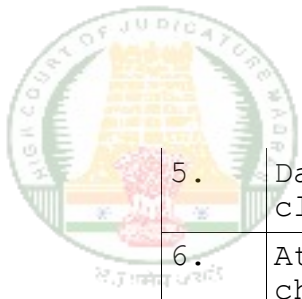
9. It is the contention of the appellant that he was working as a car driver and was earning a sum of Rs.15,000/- per month. Though the appellant has filed Ex.P3 / driving license to prove that he is a driver, he has not filed any document with regard to his income. In the absence of any evidence with regard to income of the appellant, the Tribunal has fixed a sum



of Rs.6,500/- as monthly income of the appellant, which is meagre. The accident is of the year 2013 and hence, a sum of Rs.12,000/- including future prospects is fixed as monthly income of the appellant. Due to the injuries, the appellant would not have attended his work atleast for a period of six months. Hence, a sum of Rs.72,000/- (Rs.12,000/- x 6) is awarded towards loss of income for a period of six months. The appellant has sustained fracture on shaft of humerus right. He has produced Ex.P6 / x-ray and Ex.P7 / disability certificate to prove the same. PW2 / Doctor has assessed the disability of the appellant as 45%. The Tribunal has reduced the percentage of disability from 45% to 30% holding that PW2 / Doctor has not filed any work sheet and guidelines. The reason given by the Tribunal is not correct. Considering the nature of injuries sustained by the appellant, he is entitled to compensation for 45% disability at the rate of Rs.3,000/- per percentage of disability. Thus, a sum of Rs.1,35,000/- (45% x Rs.3,000/-) is awarded towards disability.

10. According to the appellant, he took treatment as in-patient in Government Royapettah Hospital, Chennai, from 30.09.2013 to 20.10.2013. The Tribunal has awarded a sum of Rs.5,000/-, Rs.5,000/-, Rs.1,000/-, Rs.5,250/- and Rs.10,000/- towards extra nourishment, transport to hospital, damages to clothes, attendant charges and loss of amenities respectively. Considering the nature of injuries sustained by the appellant and the period of treatment taken by him, a sum of Rs.15,000/-, Rs.10,000/-, Rs.3,000/-, Rs.25,000/- and Rs.20,000/- respectively is awarded towards extra nourishment, transport to hospital, damages to clothes, attendant charges and loss of amenities. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, 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.	Disability	90,000	1,35,000	Enhanced
2.	Pain & suffering	30,000	30,000	Confirmed
3.	Extra nourishment	5,000	15,000	Enhanced
4.	Transport to hospital	5,000	10,000	Enhanced



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5.	Damages to clothes	1,000	3,000	Enhanced
6.	Attendant charges	5,250	25,000	Enhanced
7.	Medical expenses	5,000	5,000	Confirmed
8.	Future medical expenses	5,000	5,000	Confirmed
9.	Loss of income	19,500	72,000	Enhanced
10.	Loss of amenities	10,000	20,000	Enhanced
	Total	Rs.1,75,750/-	Rs.3,20,000/-	Enhanced by Rs.1,44,250/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,75,750/- is hereby enhanced to Rs.3,20,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to 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

//True Copy//

Sub Assistant Registrar

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To

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



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

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+1cc to Mr.D.Bhaskaran, Advocate Sr.106102

C.M.A.No.2373 of 2016

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srg 21/08/2020