

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.270 of 2016

Abdul Aziz

.. Appellant/Petitioner

Vs.

1.Kumar Sankarakuru

2.The Manager,

ICICI Lombard General Insurance Co. Ltd.,

Ground Floor, Savitha Plaza,

Indhira Gandhi Statue, 100 feet road,

Pondicherry

..Respondents/Respondents

PRAYER: Civil Miscellaneous Petition filed under Section 173 of the Motor Vehicle Act, 1988 against the award dated 11.09.2014 made in MCOP.No.13 of 2013 on the file of the Motor Accident Claims Tribunal, Additional Sub Judge, Puducherry.

For Appellant : Mr.G.Ramar

For Respondent 2 : Mrs. R.Sreevidhya

J U D G M E N T

The appellant has filed the claim petition in MCOP.No.13 of 2013 on the file of Motor Accident Claims Tribunal, Additional Sub Judge, Puducherry claiming a sum of Rs.36,00,000/- as compensation for the injuries sustained by him in the accident that took place on 28.11.2012.

2. The Tribunal, considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent riding by the rider of the motor cycle insured with the second respondent and directed the 2nd respondent, as insurer of the vehicle to pay a sum of Rs.8,89,000/- as compensation to the appellant.

3. Not being satisfied with the award of the Tribunal, the appellant has come out with the present appeal.

4. The learned counsel appearing for the appellant contended that the appellant sustained multiple injuries and due to the injuries, he could not do his work as he was doing earlier. The appellant was working as a cook in Saudi Arabia and due to

disability sustained by him, his entire earning capacity is affected and the Tribunal ought to have adopted multiplier method in granting compensation instead of granting compensation on percentage basis. PW2 doctor assessed that the appellant suffered 64% of disability. The Tribunal without any basis reduced the percentage of disability to 49% and granted compensation. The appellant has taken treatment as inpatient in MIOT hospital from 29.11.2012 to 21.12.2012 and the Tribunal has awarded only a sum of Rs.15,000/- towards pain and suffering instead of Rs.1,00,000/-. The appellant could not do his work at least for six months. The Tribunal failed to consider the same and granted compensation only for three months for loss of income. The compensation awarded by the Tribunal under the heads extra nourishment and transport are meagre. The Tribunal has not awarded any compensation towards loss of amenities, loss of cloth and attender charges and prayed for enhancement of compensation.

5. Per contra, learned counsel appearing for the second respondent/insurance company contended that the Tribunal considering the fact that PW2, doctor was not the doctor who treated the appellant and the percentage of disability would be reduced from 64% to 49%, by doing physiotherapy, awarded compensation under the head disability which is proper. The appellant has not proved that he is totally immobilised and due to the injuries, he lost his earning capacity. In these circumstances, the appellant is not entitled to compensation for loss of income by adopting multiplier method and the amounts granted by the Tribunal under different heads are excessive and prayed for dismissal of the appeal.

6. Heard Mr.G.Ramar, learned counsel appearing for the appellant as well as Mrs.R.Sreevidhya, learned counsel appearing for the second respondent and perused all the materials on record.

7. From the materials on record, it is seen that the appellant has examined himself as PW1 and PW2 doctor to prove the nature of injuries and disability sustained by him. The Tribunal considering the evidence let in by the appellant reduced the percentage of disability from 64% to 49%, on the ground that disability 1 to 7 assessed by PW2, doctor are acceptable and genuine and the disability 8 to 15 assessed by PW2, doctor are curable by doing physiotherapy and proper medication. Admittedly, the appellant sustained multiple fractures and injuries. The appellant was working as a cook in Saudi Arabia, at the time of accident. The Tribunal having accepted the avocation, reduced the percentage of disability to 49% . The said reason is not correct. The appellant is entitled to compensation of Rs.1,92,000/- for 64% of disability at the

rate of Rs.3,000/- per percentage. The appellant has proved that he was working as a cook in Saudi Arabia and he was earning a sum of Rs.46,924/- per month. The Tribunal has awarded loss of income only for three months. The appellant, having sustained multiple fractures and has taken treatment as inpatient from 28.11.2012 to 21.12.2012, he would have taken rest at least for six months and the amount awarded by the Tribunal towards loss of income is meagre and the same is enhanced to Rs.2,81,600/- (46,924 x 6) for the period of six months. The Tribunal has not awarded any amount towards loss of amenities, attender charges and loss of cloth. The appellant is entitled for a sum of Rs.20,000/- towards loss of amenities, Rs.20,000/- towards attender charges and Rs.2,000/- towards loss of cloth. The amounts granted by the Tribunal towards extra nourishment is meagre and the same is enhanced to Rs.25,000/-. Thus, the compensation awarded by the Tribunal is modified as follows:

Heads	Amounts awarded by the Tribunal Rs.	Amounts awarded by this Court Rs.	Award confirmed or enhanced or granted
Pain and suffering	15,000/-	15,000/-	Confirmed
Loss of income	1,40,800/-	2,81,600/-	Enhanced
Medical bills	5,76,600/-	5,76,600/-	Confirmed
Rich and nutritious food	5,000/-	25,000/-	Enhanced
Transport expenses	5,000/-	5,000/-	Confirmed
Permanent disability	1,47,000/-	1,92,000/-	Enhanced
Attender charges	Nil	20,000/-	Granted
Loss of amenities	Nil	20,000/-	Granted
Loss of cloth	Nil	2,000/-	Granted
Total	8,89,400/-	11,37,200/-	Enhanced by Rs.2,47,800/-

8. In the result, the appeal is partly allowed and award granted by the Tribunal at Rs.8,89,400/- is enhanced to Rs.11,37,200/- along with interest and costs. The second respondent is directed to deposit the award amount jointly and severally 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, to the credit of M.C.O.P.No.13 of 2013. On such deposit, the appellant/claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, by filing necessary applications before the Tribunal. The appellant/claimant is directed to pay the necessary court fee, if any, on the enhanced compensation. No costs.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

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To

1.The Additional Sub Judge
Motor Accident Claims Tribunal,
Puducherry.

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

+1 CC to Mr.R. Sreevidhya, Advocate sr 13048.

+1 CC to Mr.G.Ramar, Advocate sr 12262.

C.M.A.No.270 of 2016

SSV(CO)
SP(16/07/2019)

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