

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1166 of 2018

D.Santhanam .. Appellant/Petitioner
Vs.

1.J.Vignesh

2.The New India Assurance Co. Ltd.,
No.45, Moore Street,
5th Floor, Chennai 600 001. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 01.02.2016, made in M.C.O.P.No.1623 of 2014, on the file of the IV Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.A.A.Venkatesan

For R1 : Exparte

For R2 : Mr.J.Michael Visuvasam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant seeking enhancement of the compensation granted by the award dated 01.02.2016, made in M.C.O.P.No.1623 of 2014, on the file of the IV Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellant/claimant filed M.C.O.P.No.1623 of 2014, on the file of the IV Court of Small Causes, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 16.10.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.3,08,000/- as compensation to the appellant at the first instance and recover the same from

the 1st respondent.

4. Not being satisfied with the amounts granted by the Tribunal in the award dated 01.02.2016 made in M.C.O.P.No.1623 of 2014, the appellant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that the appellant suffered fracture of medial malleolus in the right ankle and fracture of proximal tibia left and upper end of fibula and marked discharge summaries, medical bills, continuous X-ray series as Exs.P4 to P14 to prove the same. P.W.2-Doctor assessed that the appellant suffered 80% disability. The Tribunal erroneously reduced the same to 45% and awarded meagre amount as compensation. The appellant was aged 62 years at the time of accident, due to the accident, he is bedridden and he proved the same through an Advocate Commissioner's report dated 23.01.2015. The Tribunal ought to have considered the same and granted more compensation and prayed for enhancement of the same.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant has failed to prove his avocation and income. The appellant was aged 62 years at the time of accident. In such circumstances, the compensation granted by the Tribunal considering all the materials on record is just and reasonable and prayed for dismissal of the appeal.

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

8. From the materials on record, it is seen that the appellant has contended that he was working as a mason and was earning a sum of Rs.500/- per day. Due to the accident the appellant suffered multiple injuries and fractures. P.W.2-Doctor assessed the percentage of disability suffered by the appellant at 80%. The Tribunal reduced the same to 45% on the ground that the disability assessed by P.W.2-Doctor was not assessed for the whole body. The said reasoning is erroneous. The appellant is entitled to compensation for 80% disability. The compensation granted by the Tribunal towards disability is modified to Rs.2,40,000/-, at the rate of Rs.3,000/- per percentage for 80% disability. The appellant has taken treatment as in-patient in Government Stanley Hospital for a period of 104 days on two occasions. The amounts granted by the Tribunal towards extra nourishment, transportation, damages to clothes, attender charges, future medical expenses and loss of amenities are meagre. The same are enhanced to Rs.20,000/- towards extra nourishment, Rs.20,000/- towards transportation, Rs.2,000/-

towards damages to clothes, Rs.50,000/- towards attender charges, Rs.20,000/- towards future medical expenses and Rs.50,000/- towards loss of amenities. The amounts granted by the Tribunal under other heads are just and reasonable and hence, they 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
1.	Disability	1,35,000/-	2,40,000/-	Enhanced
2.	Pain and suffering	1,00,000/-	1,00,000/-	Confirmed
3.	Extra nourishment	7,500/-	20,000/-	Enhanced
4.	Transportation	7,500/-	20,000/-	Enhanced
5.	Damages to clothes	1,000/-	2,000/-	Enhanced
6.	Attender charges	26,000/-	50,000/-	Enhanced
7.	Medical expenses	5,750/-	5,750/-	Confirmed
8.	Future medical expenses	5,000/-	20,000/-	Enhanced
9.	Loss of amenities	20,000/-	50,000/-	Enhanced
	Total	3,07,750/- rounded off to Rs.3,08,000/-	5,07,750/- rounded off to Rs.5,08,000/-	Enhanced by Rs.2,00,000/-

9. In the result, the appeal is partly allowed and compensation granted by the Tribunal at Rs.3,08,000/- is enhanced to Rs.5,08,000/- along with interest and costs. The 2nd respondent is directed to deposit the enhanced award amount 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.1623 of 2014 at the first instance and recover the same from the 1st respondent. On such deposit, the appellant is

permitted to withdraw the enhanced award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary applications before the Tribunal. No costs. The appellant is directed to pay the necessary Court fee, if any for the amount now enhanced by this Court.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsa

To

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

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

+1cc to M/s.A.A.Venkatesan Advocate sr47125

+1cc to M/s.J.Nichael Visuvasam Advocate sr42246

C.M.A.No.1166 of 2018

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