

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.710 of 2016

K.Saravanan

.. Appellant /Petitioner

Vs.

1.Roystin 'D' Silva

2.United India Insurance Co. Ltd.,
Third party claim office
No.134, Grems road
Chennai-6.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.10.2015 made in M.C.O.P.No.724 of 2013 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

For Appellant : Mr.J.Ramkumar

For R2 : Mr.S.Arunkumar

R1 : unserved

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 29.10.2015 made in M.C.O.P.No.724 of 2013 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

2.The appellant is claimant in M.C.O.P.No.724 of 2013 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, 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 05.10.2012. 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 two wheeler belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said two wheeler to pay a sum of

Rs.2,00,000/- 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 the appellant sustained fracture of temporal bone, head injury and multiple injuries all over his body. He took treatment as in-patient from 05.10.2012 to 07.10.2012 in Swaram Medicare centre, Chennai and subsequently, took treatment as in-patient from 07.10.2012 to 10.10.2012 in another hospital. P.W.2/Doctor has assessed the disability of the appellant at 25%. The Tribunal without any reason, has reduced the same to 15%. The Tribunal ought to have awarded more compensation towards disability and pain & suffering. The appellant was a painter and he could not do the work for a period of six months due to the injuries. Further he could not do the work as he was doing earlier. The Tribunal ought to have awarded more amount towards loss of income. 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/Doctor has not filed any worksheet and guidelines for assessing the disability and the disability assessed by the doctor is not for the whole body. Therefore, percentage of disability fixed by the Tribunal is correct. The appellant has not produced any document to prove his avocation and income. In the absence of evidence, the Tribunal has rightly fixed a sum of Rs.6,500/- as monthly income of the appellant, which is not meagre. The Tribunal after considering the materials available on record, has awarded just compensation. 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 the appellant has contended that he sustained head injury and fracture of temporal bone. He took treatment as in-patient from 05.10.2012 to 07.10.2012 in Swaram Medicare centre, Chennai and subsequently in another hospital from 07.10.2012 to 10.10.2012. The appellant has examined P.W.2/Doctor, marked Exs.P2, P3/discharge summaries and Ex.P7/disability certificate to prove the nature of injuries and disability sustained by him. P.W.2/Doctor has assessed the disability of the appellant at

25%. The Tribunal has reduced the same to 15% in view of the objection raised by the respondents. The same is not correct. The appellant is entitled to compensation for 25% disability at the rate of Rs.3,000/- per percentage of disability. Thus, a sum of Rs.75,000/- (Rs.3,000/- X 25%) is awarded towards disability. The appellant has contended that he was a painter and was earning a sum of Rs.600/- per day. In the absence of any material evidence with regard to avocation and income of the appellant, the Tribunal has fixed a sum of Rs.6,500/- as monthly income of the appellant and awarded a sum of Rs.19,500/- towards loss of income for a period of three months, which is not proper. The accident is of the year 2012 and the monthly income fixed by the Tribunal is meagre. A sum of Rs.7,500/- is fixed as monthly income of the appellant. Considering the nature of injuries sustained by the appellant and the fact that he was a painter, he would not have worked atleast for a period of four months. Hence, a sum of Rs.30,000/- (Rs.7,500/- X 4) is awarded towards loss of income for a period of four months. The amounts awarded by the Tribunal towards extra nourishment and attendant charges are meagre. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.10,000/- each is awarded towards extra nourishment and attendant charges. 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.	Disability	45,000	75,000	Enhanced
2.	Pain and suffering	50,000	50,000	Confirmed
3.	Extra nourishment	5,000	10,000	Enhanced
4.	Transportation	3,000	3,000	Confirmed
5.	Attendant charges	1,500	10,000	Enhanced
6.	Medical expenses	62,200	62,200	Confirmed
7.	Loss of income	19,500	30,000	Enhanced
8.	Loss of earning power	13,000	13,000	Confirmed

	Total	1,99,200 rounded off to 2,00,000	2,53,200 rounded off to 2,54,000	Enhanced by Rs.54,000/-
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8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,00,000/- is hereby enhanced to Rs.2,54,000/- 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-IV)

//True Copy//

Sub Assistant Registrar

kj

To

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

Copy To

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

+1cc to Mr.J.Ramkumar, Advocate, S.R.No. 104366
+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 104167

C.M.A.No.710 of 2016

VG I (CO)
GN(03/09/2020)