

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1850 of 2019

K.Prasanna

.. Appellant

Vs.

1. The State of Tamilnadu,
Rep. by the Joint Director of Medical and
Rural Health Service and Family Welfare Department,
Thiruvavarur District.

2. M/s. The Oriental Insurance Co. Ltd.,
No.216/115, Prakasam Salai,
Broadway, Chennai - 600 108.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.12.2018 made in M.C.O.P.No.7478 of 2016 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.Mukund R.Pandiyan

For Second Respondent : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 03.12.2018 made in M.C.O.P.No.7478 of 2016 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.By consent of both parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3.The appellant/injured person is an advocate and he is appearing on his behalf. The appellant is the claimant in M.C.O.P.No.7478 of 2016 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 14.10.2016.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the ambulance belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the vehicle to pay a sum of Rs.5,22,000/- as compensation to the appellant/claimant.

5.Not being satisfied with the award amount granted by the Tribunal dated 03.12.2018 made in M.C.O.P.No.7478 of 2016, the appellant has come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellant contended that the appellant is an advocate and he sustained grievous injuries in the accident and due to the injuries, he could not continue his work, as he was doing earlier. The Tribunal ought to have applied multiplier method instead of granting compensation by percentage basis. P.W.3/Doctor assessed that appellant suffered 55% disability. The Tribunal erroneously deducted the percentage of disability to 30% and granted compensation. The amounts awarded by the Tribunal towards pain and suffering, extra nourishment, transportation, attendant charges, loss of amenities and future medical expenses are meager. The Tribunal has not granted any amount towards loss of earning power and prayed for enhancement of compensation.

7.Per contra, Mr.J.Chandran, learned counsel appearing for the second respondent-Insurance Company contended that the appellant has not proved that he suffered functional disability and in view of the same, he is not entitled to compensation by applying multiplier method. The amounts awarded by the Tribunal under different heads are meager and prayed for dismissal of the appeal.

8.I have heard the learned counsel appearing for the appellant as well as the second respondent and perused the entire materials on record.

9.From the materials on record it is seen, the appellant contended that he is practicing as an advocate and was earning a sum of Rs.25,000/- per month. Due to the accident, he sustained multiple injuries all over his body and fracture. He examined P.W.3/Doctor to prove the same. P.W.3/Doctor deposed the nature of injuries, treatment taken and disability suffered by the appellant and issued Ex.P44/disability certificate stating that the appellant suffered 55% disability. The Tribunal reduced the percentage of disability on the ground that P.W.3/Doctor has not produced any documents and guidelines to show as to how he

arrived the percentage of disability and the percentage of disability assessed by P.W.3/Doctor is on the higher side and it cannot be considered with reference to whole body. Hence, the Tribunal reduced the percentage of disability to 30% and granted compensation based on percentage basis, which is not correct. In view of the same, the appellant is entitled to compensation for 55% disability at the rate of Rs.3,000/- per percentage. Therefore a sum of Rs.90,000/- awarded by the Tribunal as compensation towards disability is modified to Rs.1,65,000/- [Rs.3,000/- X 55]. The appellant has stated that he has taken treatment in Billroth Hospital as in-patient from 14.10.2016 to 26.10.2016 for "Right Fracture Proximal Humerus, Left communitied intra articular fracture of distal Radius / fracture ulnar styloid / fracture scaphoid with grade III Open wound. Again he was admitted in Orthomed Hospital as in-patient from 07.12.2016 to 10.12.2016 for "Scaphoid fracture - left wrist and the procedure as Open reduction internal fixation with K wire fixation scaphoid with bone grafting - left wrist". Considering the period of treatment taken by the appellant and nature of injuries, the appellant would not have attended his regular work atleast for 12 months. Therefore, the appellant is entitled to a sum of Rs.1,80,000/- [Rs.15,000/- X 12] at the rate of Rs.15,000/- per month towards loss of earning for 12 months. Considering the periods of treatment taken by the appellant as in-patient in two different hospitals, a meager sum of Rs.8,000/- granted by the Tribunal towards attendant charges is hereby enhanced to Rs.20,000/-. A meager sum of Rs.30,000/- awarded by the Tribunal towards transportation and extra nourishment is hereby enhanced to Rs.40,000/-. The Tribunal has granted a sum of Rs.30,000/- towards future medical expenses, which is meager and the same is hereby enhanced to Rs.50,000/-. The amount awarded by the Tribunal towards pain and sufferings is enhanced to Rs.1,00,000/-. The Tribunal has not granted any amount towards loss of cloth. Therefore, a sum of Rs.2,000/- is granted by this Court towards loss of cloth. The amounts awarded by the Tribunal towards medical expenses and loss of amenities are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Transportati on and extra nourishment	30,000/-	40,000/-	enhanced
2.	Attendant charges	8,000/-	20,000/-	enhanced

3.	Medical expenses	1,78,934/-	1,78,934/-	confirmed
4.	Future medical expenses	30,000/-	50,000/-	enhanced
5.	Disability	90,000/-	1,65,000/-	enhanced
6.	Loss of earning	60,000/-	1,80,000/-	enhanced
7.	Pain and sufferings and trauma	75,000/-	1,00,000/-	enhanced
8.	Loss of amenities	50,000/-	50,000/-	confirmed
9.	Loss of cloth	-	2,000/-	granted
	Total	Rs.5,21,934/- rounded off to Rs.5,22,000/-	Rs.7,85,934/- rounded off to Rs.7,86,000/-	enhanced by Rs.2,64,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,22,000/- is hereby enhanced to Rs.7,86,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second 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, to the credit of M.C.O.P.No.7478 of 2016 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. On such deposit, the Tribunal is directed to deposit the enhanced award amount directly to the appellant's account maintained at Indian Bank, Madras High Court, High Court Buildings, Chennai, in the following account number, within two weeks thereafter.

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Name of the appellant	Name of the Bank	IFSC code	Account No.
K.Prasanna	Indian Bank, Madras High Court, High Court Buildings, Chennai.	IDIB000M157	611321953

No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The IV Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.
2. The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.Mukund R.Pandiyar, Advocate, S.R.No.25821/19
+1cc to Mr.J.Chandran, Advocate, S.R.No.25883/19

C.M.A.No.1850 of 2019

SSD(CO)
vrn/21.05.2019

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