

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.368 of 2018

Tamilvanan

... Appellant/Petitioner

Vs.

1.V.Srinivasan
(Remained ex-parte before Trial Court)

2.ICICI Lombard General Insurance Co. Ltd.,
Chotabhai Centre, 2nd & 3rd Floors,
140, Nungambakkam High Road,
Chennai - 600 034. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.11.2017 made in M.C.O.P.No.7935 of 2013 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.R.Kalaiarasan

For R2 : Ms.R.Sreevidhya

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 07.11.2017 made in M.C.O.P.No.7935 of 2013 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.By consent of both parties, the appeal is taken up for final disposal at the stage of admission itself.

3.The appellant is claimant in M.C.O.P.No.7935 of 2013 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.12,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.11.2013. 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 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.94,000/- as compensation to the appellant, at the first instance and recover the same from the 1st respondent. 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 contended that the appellant was working as a Hair dresser at M/s.R.R.Hair Cure Clinic, Tambaram, Chennai and was earning a sum of Rs.6,500/- per month plus batta Rs.20/- per person attended. The appellant was aged 25 years at the time of the accident. P.W.2-Doctor, assessed the partial and permanent disability at 50% and the Tribunal reduced the same to 30%. The appellant has taken treatment as in-patient at Government hospital and he has taken continuous treatment as out-patient at private hospitals for three months. Due to the injuries sustained by the appellant, he cannot do his work as he was doing earlier. The amount awarded by the Tribunal towards disability is meagre and prayed for enhancement of compensation.

5.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant has not proved the nature of injuries, period of treatment and alleged disability. The claim petition is devoid of any merits and the appellant is not entitled for any compensation. In any event the compensation is highly excessive and prayed for dismissal of the appeal.

6.Heard the learned counsel appearing for the appellant as well as 2nd respondent-Insurance Company 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 was working as a Hair dresser at M/s.R.R.Hair Cure Clinic, Tambaram, Chennai and was earning a sum of Rs.6,500/- per month plus batta Rs.20/- per person attended. The appellant has taken treatment as in-patient at Government hospital and he has taken continuous treatment as out-patient at private hospitals for three months. P.W.2-Doctor, assessed the partial and permanent disability at 50% and the Tribunal reduced the same to 30% without any reason. Hence this Court fixes the disability at 50%. Due to the injuries sustained by the appellant, he cannot do his work as he was doing earlier.

The amount awarded by the Tribunal towards loss of income is meagre. The accident is of the year 2013. A sum of Rs.39,000/- is fixed as loss of income (Rs.6,500/- x 6). The amounts awarded by the Tribunal towards attendant charges and extra nourishment are meagre and the same are enhanced to Rs.10,000/- each respectively. The Tribunal has not awarded any amounts towards loss of amenities and damages to cloth. A sum of Rs.10,000/- is granted towards loss of amenities and a sum of Rs.2,000 is granted towards damages to cloth. The amounts awarded by the Tribunal under other heads are 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	60,000	1,50,000	Enhanced
2.	Attendant charges	2,000	10,000	Enhanced
3.	Loss of income	12,000	39,000	Enhanced
4.	Pain and suffering	10,000	10,000	Confirmed
5.	Transport to hospital	5,000	5,000	Confirmed
6.	Extra nourishment	5,000	10,000	Enhanced
7.	Loss of amenities	-	10,000	Granted
8.	Damages to cloth	-	2,000	Granted
	Total	Rs.94,000/-	Rs.2,36,000/-	Enhanced by Rs.1,42,000/-

8. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.94,000/- is hereby enhanced to Rs.2,36,000/- together with interest at the rate of 9% 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, at the first instance and recover the same from 1st respondent. 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 VIII)

//True Copy//

Sub Assistant Registrar

To

1.The II Judge,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

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

+1cc to M/s.R.SreeVidhya, Advocate Sr.23274

+1cc to M/s.N.M.Muthurajan, Advocate Sr.23371

C.M.A.No.368 of 2018

cp[col]
srg 23/09/2019

सत्यमेव जयते

WEB COPY