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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.428 of 2018

Elumalai

.. Appellant / Petitioner

Vs.

1.Chennai Metro Rail Ltd Represented by
Soma Enterprises, Soma Casting Yard,
Shivabootam Village, Near Kumar Theatre,
Opp. to Vanagaram Fish Market,
Vanagaram.

2.The Oriental Insurance Co. Ltd,
New No.216, Old No.151,
Prakasam Salai,
Chennai - 600 108.

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.09.2016 made in M.C.O.P.No.4073 of 2013 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mr.N.Sampath

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 17.09.2016 made in M.C.O.P.No.4073 of 2013 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.4073 of 2013 on the file of Motor Accident Claims Tribunal, III Small Causes Court, 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 29.05.2013. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Bolero van belonging to the 1st respondent and directed 2nd respondent-Insurance Company being the insurer



of the said Bolero van to pay a sum of Rs.3,50,000/- as compensation to the appellant. Not being satisfied with the above amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

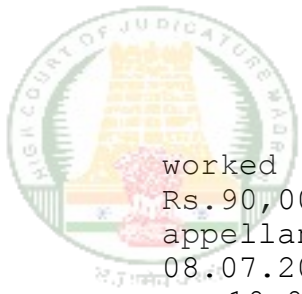
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3.The learned counsel appearing for the appellant/claimant contended that the appellant examined himself as P.W.1 and P.W.2-Doctor to prove the nature of injuries and disability. P.W.2 - Doctor has assessed the percentage of disability as 50%. The Tribunal erroneously reduced the same to 45% and not awarded any amount towards loss of earning power. The appellant lost his functioning in right leg and lost his employment as mason. The Tribunal ought to have fixed 100% loss of earning power and granted compensation. The Tribunal has not awarded any amount for future medical expenses. The amounts awarded by the Tribunal are meagre and prayed for enhancement of compensation.

4.Per contra, Mr.N.Sampath, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the P.W.2 - Doctor has not certified that the appellant suffered functional disability and has not deposed that due to injury and disability, the appellant could not do his work as he was doing earlier. The Tribunal considered the evidence of P.W.2-Doctor and reduced the percentage of disability to 45% on the ground that the disability fixed by P.W.2 - Doctor is on the higher side and awarded compensation under different heads which are not meagre and prayed for dismissal of the appeal.

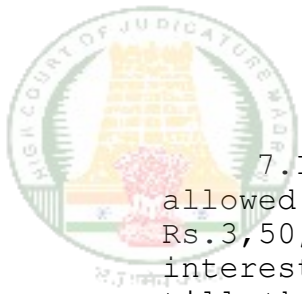
5.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused all the materials available on record.

6.From the materials available on record, it is seen that the appellant has examined P.W.2-Doctor to show the nature of injuries and disability suffered by him. P.W.2-Doctor in his evidence has deposed that the injuries suffered by the appellant do not restrict his work as mason in future. The appellant has also failed to prove that he suffered loss of earning power due to the injuries sustained in the accident. In view of the same, the Tribunal awarded compensation on percentage basis. The Tribunal reduced the percentage of disability to 45% from 50% on the ground that disability assessed by the Doctor is on the higher side and awarded a sum of Rs.1,35,000/- towards disability. The appellant is entitled for Rs.1,50,000/- towards disability for 50% disability by awarding Rs.3,000/- per percentage of disability. The accident is of the year 2013. The Tribunal has fixed monthly income of the appellant at Rs.7,500/- and granted a sum of Rs.59,500/- towards loss of income. The appellant, due to the injuries and disability would not have



worked for atleast 12 months. Considering the same, a sum of Rs.90,000/- (7,500 x 12) is granted towards loss of income. The appellant has taken treatment in hospital from 25.09.2013 to 08.07.2013 and 16.07.2013 to 02.08.2013. Surgery was conducted on 10.06.2013, screws were fixed in the right leg. A sum of Rs.14,500/- granted by the Tribunal towards attendant charges is meagre and the same is enhanced to Rs.20,000/-. The Tribunal has not awarded any amount for future medical expenses and hence a sum of Rs.20,000/- is granted towards future medical expenses. The amounts granted by the Tribunal under other heads 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.	Loss of income	59,500	90,000	Enhanced
2.	Attender charges	14,500	20,000	Enhanced
3.	Transport to hospital	10,000	10,000	Confirmed
4.	Extra nourishment	20,000	20,000	Confirmed
5.	Damage to clothing	1,000	1,000	Confirmed
6.	Pain and sufferings	50,000	50,000	Confirmed
7.	Mental and physical shock	10,000	10,000	Confirmed
8.	Disfigurement	25,000	25,000	Confirmed
9.	Loss of amenities	25,000	25,000	Confirmed
10.	Disability	1,35,000	1,50,000	Enhanced
11.	Future medical expenses	-	20,000	Granted
	Total	Rs.3,50,000/-	Rs.4,21,000/-	Enhanced by Rs.71,000/-



7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,50,000/- is hereby enhanced to Rs.4,21,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant 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. 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(CCC)

//True Copy//

Sub Assistant Registrar

mtl

To

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

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

+1 cc to M/s.K.Varadha Kamaraj, Advocate, S.R.No.21328

+1 cc to M/s.N.Sampath, Advocate, S.R.No.21184

C.M.A.No.428 of 2018

RSI (CO)
SSM(18/09/2019)