

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.456 of 2018

Abdul Rahman @ Mohammed Aakhil ... Appellant/Petitioner

Vs.

1.Subramani

2.ICICI Lombard M/s. General Insurance Company Ltd.,
1st Floor, Arihant Plaza, No.84/85, Waltax Tower,
Chennai - 600 003. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 02.09.2014 made in M.C.O.P.No.5347 of 2011 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Ms.R.Sreevidhya

R1 : No appearance

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 02.09.2014 made in M.C.O.P.No.5347 of 2011 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.5347 of 2011 on the file of Motor Accident Claims Tribunal, V 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 08.09.2011. 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 Tata Indica car belonging to the 1st respondent and directed the 2nd - respondent Insurance Company to pay a sum of Rs.3,32,000/- 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.

3.The learned counsel appearing for the appellant/claimant contended that the appellant was doing Rexine business and was earning a sum of Rs.20,000/- per month. The appellant was examined by P.W.2-Doctor, who assessed that the appellant has suffered 70% disability. The Tribunal without any valid reason reduced percentage of disability from 70% to 40%. The Tribunal has not awarded any amount towards disfigurement, attendant charges and loss of earnings. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

4.Per contra, Ms.R.Sreevidhya, learned counsel appearing for the 2nd respondent-Insurance Company contended that the medical evidence on record could not be believed and relied upon. P.W.2 - Doctor has not given treatment to the appellant. The appellant has not undergone any surgery. The percentage of disability assessed by P.W.2- Doctor is excessive. The amounts awarded by the Tribunal under different heads 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 was doing Rexine business and was earning a sum of Rs.20,000/- per month. P.W.2-Doctor has deposed the nature of injuries and treatment taken by the appellant and certified that the appellant has suffered 70% disability. The Tribunal without assigning any reason has reduced the percentage of disability to 40%. Taking into consideration, the nature of injuries and avocation, the appellant is entitled to compensation for 60% disability. The accident is of the year 2011. The appellant is entitled to Rs.1,80,000/- at the rate of Rs.3,000/- for 60%

disability. A sum of Rs.6,500/- per month is fixed as notional income of the appellant. The appellant was admitted in the hospital and has taken treatment as in-patient from 08.09.2011 to 20.09.2011. Due to the injuries sustained by him in the accident he would have lost his income for ten months. Hence, this Court awards a sum of Rs.65,000/- towards loss of income. 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	39,000	65,000	Enhanced
2.	Transportation, extra nourishment	40,000	40,000	Confirmed
3.	Damages to cloth	1,000	1,000	Confirmed
4.	Medical expenses	1,06,757	1,06,757	Confirmed
5.	Disability	80,000	1,80,000	Enhanced
6.	Pain and suffering	40,000	40,000	Confirmed
7.	Loss of amenities	25,000	25,000	Confirmed
	Total	Rs.3,31,757/- is rounded to Rs.3,32,000/-	Rs.4,57,757/- rounded off to Rs.4,58,000/-	Enhanced by Rs.1,26,000/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,32,000/- is hereby enhanced to Rs.4,58,000/- 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 respective share from the enhanced award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

+1cc to M/s.R.Sree Vidhya, Advocate Sr.22255
+1cc to M/s.K.Varadhakamaraj, Advocate Sr.21327

C.M.A.No.456 of 2018

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