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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.504 of 2018

N.Mahalingam

.. Appellant/Petitioner

Vs.

1. Dalseon O.H.,

2. Bajaj Allianz General Insurance Co. Ltd.,
O.No.38-A, No.61, 1st Avenue,
VGP Parijatham Apartments, Ashok Nagar,
Chennai 83.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 11.03.2011, made in M.C.O.P.No.2110 of 2008, on the file of the V Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.K.Varadhakamaraj

For R2 : Mr.T.K.Premkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant seeking enhancement of the compensation granted by the Tribunal in the award dated 11.03.2011, made in M.C.O.P.No.2110 of 2008, on the file of the V Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant/claimant filed M.C.O.P.No.2110 of 2008, on the file of the V Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.01.2007.

3.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 car belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.6,37,900/- as compensation to the appellant.



4. Not being satisfied with the amounts granted by the Tribunal in the award dated 11.03.2011, made in M.C.O.P.No.2110 of 2008, the appellant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that the appellant sustained crush injury over left leg, fracture of both bones left leg and fracture of left trochanter. The Tribunal failed to grant any amount towards disability. The Tribunal ought to have fixed 100% loss of earning power for the appellant, instead of fixing 70%, when the appellant lost his employment as carpenter. The Tribunal failed to grant any amount towards future prospects for the appellant. The Tribunal erred in fixing a very meagre sum of Rs.4,500/- as the monthly income of the appellant, instead of Rs.7,500/- per month. The amounts granted towards future medical expenses, attender charges, extra nourishment, transportation expenses, loss of amenities and pain and suffering are very meagre and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the evidence of P.W.2-Doctor, fixed 70% disability suffered by the appellant and granted compensation towards loss of earning, adopting percentage method. The amounts granted by the Tribunal under different heads are not meagre and the appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

8. From the award of the Tribunal, it is seen that the appellant was working as a carpenter and earning a sum of Rs.7,500/- per month. In the absence of any documentary evidence to prove the same, the Tribunal fixed a sum of Rs.4,500/- as the notional monthly income of appellant, which is very meagre. Hence, a sum of Rs.6,000/- is fixed as the monthly income of the appellant. The appellant is aged 48 years at the time of accident. Considering the evidence of P.W.2-Doctor and fixing 70% disability suffered by the appellant and adopting the multiplier '13', the compensation granted towards loss of income is modified to Rs.6,55,200/- [Rs.6,000/- x 12 x 13 x 70%]. The amounts granted by the Tribunal towards pain and suffering, extra nourishment, transportation are very meagre. Hence, the same are enhanced to Rs.50,000/-, Rs.25,000/- and Rs.10,000/- respectively. The Tribunal has granted a sum of Rs.45,000/- towards artificial limb. The same is very meagre and hence, enhanced to Rs.1,00,000/-. Considering the nature of injuries and the treatment taken by the appellant, the loss of earning



during the treatment period is modified to Rs.48,000/- at the rate of Rs.6,000/- for a period of 8 months. The appellant has taken treatment as inpatient in the Hospital from 30.01.2007 to 26.02.2007. The amount granted by the Tribunal towards attender charges is very meagre. The appellant is entitled to a sum of Rs.20,000/- towards the same. The amounts granted by the Tribunal under other heads are just and reasonable and hence, they are confirmed hereby. 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	4,91,400/-	6,55,200/-	Enhanced
2.	Pain and suffering	25,000/-	50,000/-	Enhanced
3.	Extra nourishment	5,000/-	25,000/-	Enhanced
4.	Medical expenses	5,000/-	5,000/-	Confirmed
5.	Transportation	2,000/-	10,000/-	Enhanced
6.	Damages to clothes	1,000/-	1,000/-	Confirmed
7.	Loss of earning during treatment period	13,500/-	48,000/-	Enhanced
8.	Mental agony	10,000/-	10,000/-	confirmed
9.	Loss of amenities	10,000/-	10,000/-	Confirmed
10.	Artificial limb	45,000/-	1,00,000/-	enhanced
11.	Expectancy of life	10,000/-	10,000/-	Confirmed
12.	Deformity	10,000/-	10,000/-	Confirmed
13.	Attender charges	10,000/-	20,000/-	enhanced
	Total	6,37,900/-	9,54,200/-	Enhanced by Rs.3,16,300/-



9. In the result, the appeal is partly allowed and award granted by the Tribunal at Rs.6,37,900/- is enhanced to Rs.9,54,200/- along with interest and costs. The 2nd respondent is directed to deposit the enhanced award amount 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.2110 of 2008. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary applications before the Tribunal. No costs. However, it is made clear that the appellant is not entitled for any interest for the delay period on the amount enhanced by this Court. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The V Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

copy to: The Section Officer,
VR Section, High Court, Madras.

+1 cc to M/s.T.K.Premkumar, Advocate, S.R.No.22389

+1 cc to M/s.K.Varadha Kamaraj, Advocate, S.R.No.21329

C.M.A.No.504 of 2018

SAI (CO)
SSM(25/09/2019)