

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.581 of 2018

C.Chandran

.. Appellant/Claimant

Vs.

1.K.Chandiran

2.The Manager,
ICICI Lombard General Insurance Co. Ltd.,
140, II Floor, Chottabai Street,
Nungambakkam High Road,
Chennai 600 034.

3.The Branch Manager,
Royal Sundaram Allianz General Insurance Co. Ltd.,
Vellore. ..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.09.2012, made in M.C.O.P.No.168 of 2010, on the file of the Additional District and Sessions Court, Fast Track Court, (Motor Accident Claims Tribunal), Tirupattur, Vellore District.

For Appellant : Mr.Pa.Sudesh Kumar

For R3 : Mr.S.Manohar

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 06.09.2012, made in M.C.O.P.No.168 of 2010, on the file of the Additional District and Sessions Court, Fast Track Court, (Motor Accident Claims Tribunal), Tirupattur, Vellore District.

2.The appellant/claimant filed M.C.O.P.No.168 of 2010, on the file of the Additional District and Sessions Court, Fast Track Court, (Motor Accident Claims Tribunal), Tirupattur,

Vellore District, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 04.01.2007.

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 tractor trailer belonging to the 1st respondent and directed the respondents 2 and 3 to equally pay the sum of Rs.1,10,000/- awarded as compensation to the appellant at the first instance and recover the same from the 1st respondent.

4.Not being satisfied with the amounts granted by the Tribunal in the award dated 06.09.2012, made in M.C.O.P.No.168 of 2010, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the Tribunal without assigning any reasons reduced the percentage of disability suffered by the appellant from 47% to 30%. The Tribunal erred in not granting any amount towards attender charges, when the appellant has taken treatment for more than 2 months. The amounts granted by the Tribunal towards loss of income, extra nourishment, future medical expenses and pain and suffering are very low and prayed for enhancement of the compensation.

6.Per contra, Mr.S.Manohar, learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the evidence of P.W.2-Doctor, who deposed that he is not the Doctor who treated the appellant, reduced the percentage of disability assessed by the Doctor from 47% to 30% and granted compensation towards the disability, which is not meagre. The amounts granted by the Tribunal under different heads are not meagre and the appellant has not made out any case for enhancement of 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 Tribunal considering the pleadings, held that the accident occurred due to rash and negligent driving by the driver of the tractor trailer belonging to the 1st respondent and insured with the respondents 2 and 3 and ordered pay and recovery, directing the respondents 2 and 3/insurer of tractor and trailer to recover the same from the 1st respondent. Considering the evidence of P.W.2, the Tribunal reduced the percentage of disability from 47% to 30%. The Tribunal has not assigned any

reason for reducing the same. The appellant is entitled to a sum of Rs.94,000/-, for compensation towards 47% disability at the rate of Rs.2,000/- per percentage. The appellant has taken treatment as in-patient at Kuppam P.E.B hospital from 21.03.2007 to 01.04.2007 and from 23.08.2010 to 10.09.2010. The Tribunal failed to grant any amount towards attender charges, loss of amenities and loss of cloth. The appellant is entitled to a sum of Rs.10,000/-, Rs.10,000/- and Rs.1,000/- towards attender charges, loss of amenities and loss of cloth respectively. The amounts granted by the Tribunal towards pain and suffering and extra nourishment are meagre. Hence, the same are enhanced to Rs.30,000/- and Rs.10,000/- respectively. The appellant is entitled to a sum of Rs.36,000/- towards loss of income for six months at the rate of Rs.6,000/- per month. 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.	Disability	30,000/-	94,000/-	Enhanced
2.	Loss of income	12,000/-	36,000/-	enhanced
3.	Transportation	8,000/-	8,000/-	Confirmed
4.	Extra nourishment	5,000/-	10,000/-	Enhanced
5.	Medical expenses and future medical expenses	40,000/-	40,000/-	confirmed
6.	Pain and suffering	15,000/-	30,000/-	enhanced
7.	Attender charges	-	10,000/-	Granted
8.	Loss of amenities	-	10,000/-	Granted
9.	Loss of cloth	-	1,000/-	granted
	Total	1,10,000/-	2,39,000/-	Enhanced by Rs.1,29,000/-

9. In the result, the appeal is allowed and amount granted by the Tribunal at Rs.1,10,000/- is enhanced to Rs.2,39,000/- along

with interest and costs. The respondents 2 and 3 are each directed to deposit 50% of 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.168 of 2010 at the first instance and recover the same from the 1st respondent. 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 and the appellant is directed to pay the necessary Court fee, if any, for the enhanced award amount now determined by this Court.

gsa

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District and Sessions Judge,
Fast Track Court,
(Motor Accident Claims Tribunal),
Tirupattur, Vellore District.

2.The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.S.Manohar, Advocate, SR.No.21324

+1cc to Mr.P.A.Sudesh Kumar, Advocate, SR.No.21386

C.M.A.No.581 of 2018

Kak(09/09/2019)

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