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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.681 of 2018

Anbalagan

.. Appellant/ Petitioners

Vs.

1.M/s.Marg Liomited,
Paramankeni Village,
Seyur Taluk,
Kanchipuram.

2.Reliance General Insurance Company Limited,
No.6, Haddows Road,
Nungambakkam,
Chennai - 600 006.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.03.2013 made in M.C.O.P.No.3078 of 2011 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant : Ms.A.Subadra

For R1 : Dr.S.Padma

For R2 : Mr.S.Arunkumar

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 20.03.2013 made in M.C.O.P.No.3078 of 2011 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.



2.By consent of 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.3078 of 2011 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, 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 14.06.2011. 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 lorry belonging to the 1st respondent and directed the 2nd-respondent Insurance Company to pay a sum of Rs.1,17,500/- as compensation to the appellant. 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 vehicle was insured with the 2nd respondent-Insurance Company and there is no violation of policy. The Tribunal has rightly directed the 2nd respondent to pay compensation. The Tribunal without considering the nature of injuries suffered by the appellant has awarded meagre amount of Rs.1,17,500/- as compensation. The appellant was working as a van driver and was earning a sum of Rs.9,000/- per month. Due to the injuries, he has suffered 50% permanent disability and proved that he could not do his work as he was doing earlier. The appellant has examined by P.W.2-Doctor and proved the injuries and disability suffered by him. The Tribunal has erroneously reduced the percentage of disability from 50% to 35% and granted lesser amount as compensation towards disability. He has taken treatment in hospital as in-patient from 14.06.2011 to 22.06.2011, 'K' wire was fixed and taken treatment as in-patient from 01.07.2011 to 29.07.2011, underwent surgery on 17.07.2011 and 'K' wire was removed on 05.08.2011. Due to the injuries the appellant has suffered 100% loss of earning capacity and prayed for enhancement of compensation.

5.Per contra, Mr.S.Arunkumar, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the nature of injuries and evidence of P.W.2-Doctor, reduced the percentage of disability from 50% to 35%. The total compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

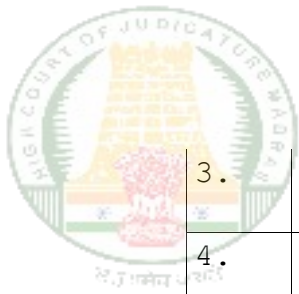
6.Heard the learned counsel appearing for the appellant as well as the respondents 1 & 2 and perused all the materials available on record.



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7. From the materials available on record, it is seen that the appellant has contended that he was working as a van driver and was earning a sum of Rs.9,000/- per month at the time of the accident. Due to multiple injuries and fracture dislocation of left foot with compartment syndrome, he has taken treatment as in-patient from 14.06.2011 to 22.06.2011 and under went surgery and again he has taken treatment as in-patient from 01.07.2011 to 29.07.2011 and 17.07.2011 thereby skin grafting was done and 'K' wire was removed on 05.08.2011. The appellant has examined himself as P.W.1 and deposed that he was working as a van driver and was earning a sum of Rs.9,000/- per month at the time of the accident. Due to the injuries he could not continue his work as he was doing earlier. As a driver, he lost his loss of earning capacity. The appellant has suffered functional disability and was examined by P.W.2-Doctor who deposed the nature of injuries and treatment taken by the appellant and certified that the appellant has suffered 50% disability. The Tribunal reduced the percentage of disability to 35%, on the ground that P.W.2-Doctor has not given treatment to the appellant and has not filed x-ray in support of the disability certificate. The reason given by the Tribunal is not correct. The appellant is entitled to compensation for 50% disability. The accident is of the year 2011. The appellant is entitled to Rs.1,50,000/- at the rate of Rs.3,000/- for 50% disability. The Tribunal has not awarded any amount towards loss of income. A sum of Rs.7,500/- is fixed as monthly income and a sum of Rs.45,000/- is granted towards loss of income for six months. The amounts awarded by the Tribunal towards damages to cloth and extra nourishment are meagre and the same are hereby enhanced to Rs.2,000/- and Rs.20,000/- respectively. The Tribunal has not granted any amount towards attendant charges and loss of amenities and this Court awards a sum of Rs.20,000/- each respectively. The amounts awarded by the Tribunal under the heads of transportation and pain & suffering 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.	Transport to Hospital	10,000	10,000	Confirmed
2.	Extra nourishment	7,000	20,000	Enhanced



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3.	Damages to cloth	500	2,000	Enhanced
4.	Pain and suffering	30,000	30,000	Confirmed
5.	Disability	70,000	1,50,000	Enhanced
6.	Loss of amenities	-	20,000	Granted
7.	Attendant charges	-	20,000	Granted
	Total	Rs.1,17,500/-	Rs.2,52,000/-	Enhanced by Rs.1,34,500/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,17,500/- is hereby enhanced to Rs.2,52,000/- 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. Both 1st respondent as well as the 2nd-respondent Insurance Company are 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 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(Co)

//True Copy//

Sub Assistant Registrar

mtl

To

The V Judge,

Court of Small Causes,

Motor Accidents Claims Tribunal, Chennai.

Copy to;

The Section Officer,

V.R. Section,

High Court, Madras.

+1cc to M/s.M.Malar , Advocate SR.No. 26425

+1cc to Dr.S.Padma , Advocate SR.No. 25778

C.M.A.No.681 of 2018

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A.SK(14/11/2019)