

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.712 of 2018

A.Eliyas

.. Appellant/Petitioner

Vs.

1.Blaine Galvin Cobb Phillips

2.The National Insurance Company Limited,

Motor Third Party Cell,

No.751, Anna Salai,

Chennai - 600 002.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.07.2013 made in M.C.O.P.No.125 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Tambaram.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Ms.K.Saraswathi for
Mr.C.R.Krishnamoorthy

R1 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 12.07.2013 made in M.C.O.P.No.125 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Tambaram.

2.The appellant is the claimant in M.C.O.P.No.125 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Tambaram. He filed the above said claim petition, claiming a sum of Rs.12,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.03.2006.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver-cum-owner of the car belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the vehicle, to pay a sum of Rs.3,84,768/- as compensation to the appellant.

4. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the appellant suffered injuries in spinal cord and he underwent surgery and plates were implanted and screws were fixed in vertebral column of the spinal cord. It made him weak and his entire life has been affected and he is unable to stand for long time and he was permitted to sit and give evidence before the Tribunal. The Tribunal ought to have fixed 100% loss of earning power. The appellant was working as labour contractor in G.A. Jolly Company and was earning a sum of Rs.10,000/- per month and produced income tax returns to prove the income. The Tribunal erroneously fixed meagre sum of Rs.7,500/- as monthly income. P.W.2/Doctor has certified that appellant suffered 60% disability. The Tribunal erroneously reduced the percentage of disability to 50% fixed after observing the appellant in the open Court holding that appellant cannot even stand continuously even for short period of time. The appellant has to undergo further surgery. The Tribunal failed to award any amount towards future medical expenses. The Tribunal has not granted any amount towards attendant charges, loss of amenities, loss of enjoyment of marital life. The Tribunal has awarded a sum of Rs.3,84,768/- but decree was drafted only for Rs.3,38,768/- and the appellant has proved that he suffered functional disability. The Tribunal ought to have granted compensation by adopting multiplier method and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal considering the documents filed by the appellant and failure to prove his income as labour contractor, fixed a sum of Rs.7,500/- as monthly income. The accident occurred in the year 2006 and the monthly income fixed by the Tribunal is not meagre. P.W.2/Doctor has certified that appellant suffered 60% permanent disability. The Tribunal considering the nature of injuries, treatment taken, rightly reduced the percentage of disability to 50% and granted compensation at the rate of Rs.2,000/- per percentage, which is not meagre. The appellant has not proved that he suffered functional disability. The appellant is not entitled to claim compensation for 100% loss of earning power and compensation by applying multiplier method. The amount awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

7. I have heard the learned counsel appearing for the appellant as well as the second respondent and perused the entire materials on record.

8. From the materials available on record it is seen that it is the contention of the appellant that he was a labour contractor in M/s.G.A.Jolli, Chennai, and was earning a sum of Rs.10,000/- per month. He has produced Exs.P18 to P21/income tax returns. The Tribunal considering the said documents and considering the fact that no proof of salary was filed by the appellant, fixed monthly income of the appellant at Rs.7,500/-. The accident occurred in the year 2006 and the monthly income fixed by the Tribunal is not meagre. The appellant examined P.W.2/Doctor to prove that he suffered injury in spinal cord and underwent surgery and he suffered functional disability. According to the appellant, when the appellant appeared before the Tribunal, the Tribunal permitted him to sit and give evidence as appellant was finding it very difficult to stand and give evidence. The appellant has extracted order of the Tribunal in the grounds of appeal. Considering the materials on record in entirety, nature of injuries, treatment taken by the appellant, evidence of P.W.2/Doctor, the appellant is entitled to compensation by adopting multiplier method. The Tribunal has granted compensation for 50% disability on percentage basis. The Tribunal reduced the percentage of disability from 60% to 50% on the ground that P.W.2/Doctor has hypothetically calculated permanent disability without any basis and the said reason is not correct. The appellant is entitled to compensation by multiplier method for 60% disability. The appellant is aged 26 years at the time of accident and the multiplier applicable is '17'. The compensation awarded by the Tribunal towards disability is modified to Rs.9,18,000/- [Rs.7,500/- X 12 X 17 X 60/100]. A sum of Rs.2,500/- awarded by the Tribunal towards extra nourishment is meagre and the same is hereby enhanced to Rs.30,000/-. The Tribunal has not granted any amount towards loss of amenities, attendant charges and future medical expenses. Considering the nature of injuries and treatment taken, a sum of Rs.25,000/- each have been granted by this Court towards loss of amenities, attendant charges and future medical expenses. The compensation awarded by the Tribunal under other heads are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

WEB COPY

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Medical bills	67,268/-	67,268/-	Confirmed
2.	Loss of earnings	40,000/-	40,000/-	Confirmed
3.	Transportation	15,000/-	15,000/-	Confirmed
4.	Damage to clothes	1,500/-	1,500/-	Confirmed
5.	Extra nourishment	2,500/-	30,000/-	Enhanced
6.	Pain and sufferings	50,000/-	50,000/-	Confirmed
7.	Disability	1,00,000/-	9,18,000/-	Enhanced
8.	Future loss of earning	75,000/-	75,000/-	Confirmed
9.	Loss of amenities	-	25,000/-	Granted
10.	Attendant charges	-	25,000/-	Granted
11.	Future medical expenses	-	25,000/-	Granted
	Total	Rs.3,51,268/- Tribunal arrived at Rs.3,84,768/-	Rs.12,71,768/-	enhanced by Rs.8,87,000/-

9.From the award of the Tribunal it is seen the Tribunal has awarded a sum of Rs.3,84,768/- as compensation. But the decree has been wrongly drafted directing the second respondent-Insurance Company to pay only a sum of Rs.3,38,768/-.

10.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.3,84,768/- is hereby enhanced to Rs.12,71,768/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent 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 is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn by making

necessary applications before the Tribunal. The appellant is not entitled to any interest for the delay period on the amount of Rs.8,87,000/- enhanced by this Court. The appellant is directed to pay the necessary Court fee for the enhanced award amount now determined by this Court. No costs.

Sd/-
Assistant Registrar(CSIX)

//True Copy//

Sub Assistant Registrar

krk
To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Tambaram.

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

+1cc to Mr.K.Varadhakamaraj Advocate sr31406

+1cc to Mr.C.R.Krishnamoorthy Advocate sr31158

C.M.A.No.712 of 2018

aa04/02/2020

सत्यमेव जयते

WEB COPY