

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.778 of 2018

A.S.Udhayashankar

.. Appellant/Petitioner

Vs.

1.S.Shanthi

2.The National Insurance Co. Ltd.,
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 04.12.2017 made in M.C.O.P.No.5720 of 2011 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant : Mr.K.Suryanarayanan

For R2 : Mr.D.Bhaskaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 04.12.2017 made in M.C.O.P.No.5720 of 2011 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.5720 of 2011 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai. He filed the above 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 13.07.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the lorry belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the vehicle to pay a sum of Rs.1,88,000/- as compensation to the appellant/claimant.

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 P.W.2/Doctor certified that appellant suffered 45% disability. The Tribunal on erroneous reason reduced the percentage of disability to 35%. The Tribunal having held that due to disability, the appellant would be losing his earning capacity, erred in awarding compensation only for 10% disability. The appellant was working as an Advertisement agent and was earning a sum of Rs.10,000/- per month and produced Ex.P10/salary certificate to prove the income. The Tribunal erred in rejecting the same and fixed a meager sum of Rs.7,000/- as monthly income. The amount awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

6. Per contra, Mr.D.Bhaskaran, learned counsel appearing for the second respondent-Insurance Company contended that the percentage of disability assessed by P.W.2/Doctor is excessive and P.W.2/Doctor is not the Doctor, who treated the appellant and not enclosed the working sheet and guidelines. The Tribunal applied multiplier method for awarding compensation and hence reduced the percentage of disability to 10% for loss of earning capacity and granted compensation, which is proper. The appellant has not proved by acceptable evidence his avocation and income and the Tribunal considering the materials on record has fixed monthly income at Rs.7,000/- and awarded compensation under different heads which are not meager. 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 second respondent and perused the entire materials on record.

8. From the materials available on record it is seen that the appellant contended that that he was working as an Advertisement agent and was earning a sum of Rs.10,000/- per month. In the accident he suffered crush injuries on the right foot heel and underwent 3 surgeries. He has taken treatment as in-patient in 2 different hospitals for 38 days from 19.07.2011 to 22.08.2011 and from 02.02.2012 to 04.02.2012. P.W.2/Doctor assessed the disability suffered by the appellant as 50% partial permanent disability. But the Tribunal reduced the percentage of partial permanent disability to 35% on the ground that P.W.2/Doctor has not enclosed the worksheet as stipulated in the "Guidelines & Gazette Notification" issued by Ministry of Social

Justice & Empowerment. The Tribunal has held that the appellant being an Advertisement agent, the disability suffered by him will affect the earning capacity of the appellant up to 10% and awarded compensation, as he has to visit different places for his job and the percentage of disability fixed by the Tribunal for loss of earning capacity is meager. This Court fixes the percentage of disability towards loss of earning capacity for the appellant as 25%. The appellant contended that he was working as an Advertisement agent and was earning a sum of Rs.10,000/- per month. He has not substantiated the said contention. In the absence of material evidence, the Tribunal fixed a sum of Rs.7,000/- as monthly income of the appellant, which is meager. The accident occurred in the year 2011. A sum of Rs.7,500/- is fixed by this Court as monthly income of the appellant. The Tribunal has rightly granted 25% enhancement towards future prospects. Thus, the compensation awarded by the Tribunal towards loss of earning capacity is modified to Rs.3,65,625/- [Rs.7,500/- + Rs.1,875/- (25% of Rs.7,500/-) X 12 X 13 X 25/100]. Considering the nature of injuries, percentage of disability and surgeries underwent by the appellant, a sum of Rs.20,000/- granted by the Tribunal towards pain and sufferings is meager and the same is hereby enhanced to Rs.30,000/-. The Tribunal has granted a sum of Rs.10,000/- towards transportation and extra nourishment and the same is meager. The appellant is entitled to a sum of Rs.10,000/- towards transportation and Rs.20,000/- towards extra nourishment. The appellant has taken treatment as in-patient for 38 days and a sum of Rs.11,400/- granted by the Tribunal towards attendant charges is meager and the same is hereby enhanced to Rs.30,000/-. A sum of Rs.10,000/- awarded by the Tribunal towards loss of amenities and disfigurement is meager and the same is enhanced to Rs.30,000/-. The Tribunal has not granted any amount towards loss of cloth. Therefore, a sum of Rs.2,000/- is granted by this Court towards loss of cloth. 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.	Pain and sufferings	20,000/-	30,000/-	enhanced
2.	Transportation and Extra nourishment	10,000/-	10,000/- 20,000/-	confirmed granted
3.	Attendant charges	11,400/-	30,000/-	enhanced
4.	Loss of earning capacity	1,36,500/-	3,65,625/-	enhanced

5.	Loss of amenities and disfigurement	10,000/-	30,000/-	enhanced
6.	Loss of cloth	-	2,000/-	granted
	Total	Rs.1,87,900/ - rounded off to Rs.1,88,000/ -	Rs.4,87,625/ - rounded off to Rs.4,88,000/ -	enhanced by Rs.3,00,000/ -

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,88,000/- is hereby enhanced to Rs.4,88,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the Court fee, if any on the enhanced amount of compensation. The second 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 is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

krk
To

1.The VI Judge,
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

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

+1cc to Mr.D.Bhaskaran, Advocate SR.No.29594

+1cc to Mr.K.Suryanarayanan, Advocate SR.No.29044

C.M.A.No.778 of 2018

RSI (CO)
GMY (10/10/2019)