



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.864 of 2018

Daris Machado

.. Appellant/ Petitioner

Vs.

1.G.Namasivayam

2.ICICI Lombard General Insurance Company Limited,
Chottabhai Centre, No.140, 2nd and 3rd Floor,
Nungambakkam High Road,
Chennai - 600 034.

. Respondents/ respondents

(R1 remained exparte before the Tribunal, hence
Notice may be dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under
Section 173 of the Motor Vehicles Act, 1988, against the
Judgment and Decree dated 07.03.2014 made in M.C.O.P.No.4069
of 2010 on the file of the Motor Accident Claims Tribunal,
Special Sub Court No.I, Chennai.

For Appellant : Mr.K.Varadha Kamaraj
For R2 : Mrs.R.Sree Vidhya

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for
enhancement of compensation granted by the award dated
07.03.2014 made in M.C.O.P.No.4069 of 2010 on the file of the
Motor Accident Claims Tribunal, Special Sub Court No.I,
Chennai.

2.The appellant is the claimant in M.C.O.P.No.4069 of
2010 on the file of the Motor Accident Claims Tribunal,
Special Sub Court No.I, Chennai. He filed the above said
claim petition, claiming a sum of Rs.8,50,000/- as
compensation for the injuries sustained by him in the
accident that took place on 09.11.2009.

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 first respondent and directed the second respondent-Insurance Company to pay a sum of Rs.2,10,000/- as compensation to the appellant.

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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 60% disability. The Tribunal reduced the same to 55% on the ground that assessment of disability by P.W.2/Doctor is on higher side. The appellant was aged 28 years and was working as a Senior Software Engineer in Infosys, Chennai and was earning a sum of Rs.32,000/- per month. The Tribunal has granted a sum of Rs.50,000/- towards loss of income, which is meagre. The Tribunal has not granted any amount towards loss of earning power, loss of amenities and attendant charges. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal rightly reduced the percentage of disability from 60% to 55% on the ground that the assessment of disability by P.W.2/Doctor is on higher side. The appellant has not produced any material evidence to prove that he was earning a sum of Rs.32,000/- per month. In the absence of material evidence, the Tribunal has awarded a sum of Rs.50,000/- towards loss of income, which is excessive. 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 P.W.2/Doctor certified that appellant suffered 60% disability. The Tribunal reduced the same to 55% on the ground that assessment of disability by P.W.2/Doctor is on the higher side. The reason given by the Tribunal for reducing the percentage of disability is erroneous. The appellant is entitled to compensation for 60% disability. The accident occurred in the year 2009 and the Tribunal has granted a sum of Rs.2,000/- per percentage, which is meagre. The appellant is entitled to compensation for 60% disability at the rate of Rs.3,000/- per percentage. The compensation awarded by the Tribunal towards disability is modified to



Rs.1,80,000/- [Rs.3,000/- X 60]. The learned counsel for the appellant contended that the appellant was aged 28 years and was working as a Senior Software Engineer in Infosys, Chennai and was earning a sum of Rs.32,000/- per month. The appellant produced Ex.P8/salary certificate. The Tribunal has granted a sum of Rs.50,000/- towards loss of income, which is meagre. The monthly income of the appellant is fixed at Rs.20,000/- by this Court. Due to the nature of injuries and disability suffered by the appellant, he would not have attended his work atleast for a period of six months. The appellant is entitled to a sum of Rs.1,20,000/- [Rs.20,000/- X 6] towards loss of income. The Tribunal has awarded a sum of Rs.5,000/- towards transportation, which is meagre and the same is hereby enhanced to Rs.10,000/-. A meagre sum of Rs.5,000/- granted by the Tribunal towards extra nourishment is hereby enhanced to Rs.20,000/-. The Tribunal has not granted any amount towards loss of amenities. Considering the nature of injuries and disability suffered, a sum of Rs.30,000/- is granted by this Court, towards loss of amenities. The Tribunal has not granted any amount towards loss of cloth. A sum of Rs.2,000/- is granted by this Court towards loss of cloth. The amount awarded by the Tribunal under other heads are 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.	Disability	1,10,000/-	1,80,000/-	Enhanced
2.	Transportation	5,000/-	10,000/-	Enhanced
3.	Extra nourishment	5,000/-	20,000/-	Enhanced
4.	Medical expenses	15,000/-	15,000/-	Confirmed
5.	Pain and suffering	25,000/-	25,000/-	Confirmed
6.	Loss of income	50,000/-	1,20,000/-	Enhanced
7.	Loss of amenities	-	30,000/-	Granted
8.	Loss of cloth	-	2,000/-	Granted
	Total	Rs.2,10,000/-	Rs.4,02,000/-	enhanced by - Rs.1,92,000/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal



at Rs.2,10,000/- is hereby enhanced to Rs.4,02,000/- 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, together 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. It is made clear that the appellant is not entitled to any interest for the delay period on the amount of Rs.1,92,000/- now enhanced by this Court. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Special Subordinate Judge No.I,
Motor Accident Claims Tribunal,
Chennai.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.K.Varadha kamal raj , Advocate SR.No. 35652
+1cc to M/s.R.Sreevidhya, Advocate SR.No. 35917

C.M.A.No.864 of 2018

A.SK(11/10/2019)