



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.88 of 2018

Chinnaiya

.. Appellant/Petitioner

Vs.

1.T.Mahendran

2.The United India Insurance Co. Ltd.,

No.134, Greaves Road,

T.P. Cell, Chennai 600 006. .. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 24.10.2017, made in M.C.O.P.No.3627 of 2013, on the file of the II Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.K.Balaji

For R1 : No appearance

For R2 : Mr.P.Sankaranarayanan

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 24.10.2017, made in M.C.O.P.No.3627 of 2013, on the file of the II Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant/claimant filed M.C.O.P.No.3627 of 2013, on the file of the II Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.10.2011.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver-cum-owner of the goods vehicle and directed the 2nd respondent to pay



4. Not being satisfied with the amounts granted by the award dated 24.10.2017, made in M.C.O.P.No.3627 of 2013, the appellant/claimant has come out with the present appeal.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the claim of Rs.2,13,762/- for medical expenses is excessive and the medicines alleged to have been taken by the appellant are not related to the injuries and the treatment taken by the appellant. The Tribunal has considered each and every tablets, their usage and rejected the same by giving reasons. The appellant has not proved his avocation and income. In the



absence of material evidence, the notional income of the appellant fixed by the Tribunal is not meagre. The appellant has not let in any evidence to show that he lost income during the treatment period. The percentage of disability assessed by P.W.2-Doctor is excessive and the Tribunal has given valid reason for reducing the same to 20% and granted compensation. 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. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

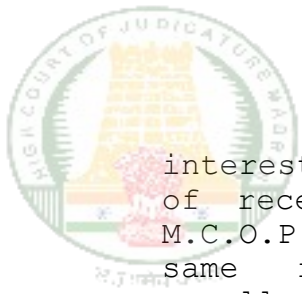
8. From the materials on record, it is seen that the appellant has claimed a sum of Rs.2,13,762/- towards medical expenses. The Tribunal has awarded only a sum of Rs.30,000/- as against the claim of Rs.2,13,762/-. According to the Tribunal, the three tablets namely R cin, Olmetrack and Alfabol are not relevant to the treatment taken by the appellant. The learned counsel appearing for the appellant in the grounds of appeal has contended as to how each and every tablet is relevant for treatment taken by the appellant and also produced additional typed set of papers in support of the same. The 2nd respondent has not examined any Doctor to disprove that the contention of the appellant and Ex.P7-medical bills are irrelevant for the injuries and treatment taken by the appellant. There is no material on record to show that three tablets given to the appellant are irrelevant. The Tribunal in the absence of any medical report, erroneously rejected the claim of the appellant for medical expenses. In view of the same, the appellant is entitled to compensation of Rs.2,13,762/- as per Ex.P7 towards medical expenses. As far as the contention of the learned counsel appearing for the appellant with regard to percentage of disability is concerned, P.W.2-Doctor has certified that the appellant suffered 65% disability. The Tribunal reduced the same to 20%. The reason given by the Tribunal for reducing the disability by 45% is not correct. The appellant is entitled to compensation for 65% at the rate of Rs.3,000/- per percentage. Hence, the compensation granted by the Tribunal under the head, disability is modified to Rs.1,95,000/-. The learned counsel for the appellant contended that the appellant has taken treatment as inpatient for more than 103 days. From the materials on record, it is seen that the appellant has taken treatment as inpatient from 15.10.2011 to 24.10.2011, 29.10.2011 to 07.11.2011 and 29.11.2011 to 21.02.2012 and produced Exs.P2, P3 and P4-discharge summaries. The amounts granted by the Tribunal



for extra nourishment, attender charges, pain and suffering and transportation are meagre and the same are enhanced to Rs.20,000/-, Rs.10,000/-, Rs.50,000/- and Rs.15,000/- respectively. The Tribunal has granted a sum of Rs.12,000/- for loss of income. The appellant has contended that he was a vegetable vendor and was earning a sum of Rs.20,000/- per month. The appellant failed to substantiate the said contention. The accident is of the year 2011. A sum of Rs.6,000/- fixed by the Tribunal as monthly income is meagre and hence, a sum of Rs.7,500/- is fixed as the monthly income of the appellant. Considering the entire materials on record, the appellant is entitled for loss of income for 12 months. Hence, a sum of Rs.90,000/- [Rs.7,500/- x 12] is granted towards loss of income. The Tribunal has not awarded any amount for loss of cloth and loss of amenities. A sum of Rs.2,000/- and Rs.20,000/- respectively are granted towards loss of cloth and loss of amenities. 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.	Medical bills	30,000/-	2,13,762/-	Enhanced
2.	Disability	60,000/-	1,95,000/-	enhanced
3.	Transportation	5,000/-	15,000/-	enhanced
4.	Extra nourishment	5,000/-	20,000/-	Enhanced
5.	Damage to clothing	-	2,000/-	Granted
6.	Loss of amenities	-	20,000/-	Granted
7.	Loss of income	12,000/-	90,000/-	enhanced
8.	Attender charges	2,000/-	10,000/-	enhanced
9.	Pain and suffering	10,000/-	50,000/-	enhanced
	Total	1,24,000/-	6,15,762/-	Enhanced by Rs.4,91,762/-

9. In the result, the appeal is partly allowed and award granted by the Tribunal at Rs.1,24,000/- is enhanced to Rs.6,15,762/- along with interest and costs. The 2nd respondent is directed to deposit the enhanced award amount along with



interest and costs, 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.3627 of 2013 at the first instance and recover the same from the 1st respondent. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

gsa

To
1.The II Judge,
(Motor Accident Claims Tribunal)
Small Causes Court,
Chennai.

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

+1cc to Mr.S.Anbraja, Advocate SR.No.29103

C.M.A.No.88 of 2018

KK (CO)
GMY (04/10/2019)