

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.89 of 2018

A.Suresh

.. Appellant

Vs.

1.Saladeen

2.The Manager,
United India Insurance Co. Ltd.,
No.134, Greams Road,
Silingi Building, 4th Floor,
Chennai-600 006.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 08.08.2017 and made in M.C.O.P.No.562 of 2012, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.A.A.Venkatesan

For R2 : Mr.G.Udayasankar

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the award dated 08.08.2017 and made in M.C.O.P.No.562 of 2012, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2.The appellant is claimant in M.C.O.P.No.562 of 2012, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 31.12.2011. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent being the insurer of the 1st respondent's motorcycle, to pay a sum of Rs.1,54,000/- as compensation to the appellant at the first

instance and recover the same from the 1st respondent. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellant contended that the Tribunal failed to consider the age and avocation of the appellant and awarded meagre sum of Rs.1,54,000/- as compensation without considering the oral and documentary evidence let in by the appellant. The appellant was 32 years at the time of accident and suffered with fracture. P.W.2-Doctor assessed that the appellant suffered 40% disability. The Tribunal erroneously reduced the percentage of disability to 30%. Due to the injuries suffered by the appellant, he could not do his work as he was doing earlier. The amounts awarded by the Tribunal for transport, attendant charges, loss of income and loss of amenities are meagre and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has failed to prove the avocation and income. In the absence of material, the Tribunal rightly fixed the monthly income of the appellant at Rs.6,000/-. P.W.2-Doctor assessed the disability of the appellant at 40% which is excessive. The Tribunal reduced the same to 30% on the ground that if the appellant takes physiotherapy treatment, the disability will be reduced. There is no error in reduction of percentage of disability. The Tribunal has awarded compensation under different heads which are just compensation. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and perused the materials on record.

6.From the materials on record, it is seen that the appellant has contended that he was carpenter and earning a sum of Rs.10,000/- per month. At the time of accident the appellant was 32 years and he suffered fracture on his right femur and sustained pain and stiffness and his hip movements were restricted. The appellant examined P.W.2-Doctor who assessed that the appellant suffered 40% disability and deposed that due to the injuries and disability the avocation of the appellant is affected. The Tribunal reduced the percentage of disability to 30% on the ground that the disability can be cured by way of physiotherapy treatment and it is not a permanent disability. The reason given by the Tribunal for reducing the disability is not correct. The appellant is entitled compensation for 40%

disability at the rate of 3,000/- per percentage. The amounts awarded by the Tribunal towards disability is modified to Rs.1,20,000/- [40 x Rs.3000]. The appellant has not proved that he suffered functional disability due to the injuries and hence, the appellant is not entitled for compensation by applying multiplier method. The appellant claimed that he is a carpenter and due to the injuries he would have not worked atleast for six months. The monthly income fixed by the Tribunal is meagre. The accident is of the year 2011. A sum of Rs.8,000/- per month is fixed as notional income of the deceased. The appellant is entitled for Rs.48,000/- towards loss of income for six months. The Tribunal awarded a sum of Rs.2,000/- and Rs.5,000/- towards attendant charges and extra nourishment the same are meagre. A sum of Rs.7,500/- and Rs.10,000/- granted towards attendant charges and extra nourishment. The amounts awarded by the Tribunal under other heads are confirmed. Thus, the amounts granted 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	30,000	Confirmed
2.	Attendant Charges	2,000	7,500	Enhanced
3.	Disability	90,000	1,20,000	Enhanced
4.	Loss of Income	12,000	48,000	Enhanced
5.	Pain and Suffering	10,000	10,000	Confirmed
6.	Transportation	5,000	5,000	Confirmed
7.	Extra Nourishment	5,000	10,000	Enhanced
	Total	1,54,000	2,30,500	Enhanced by Rs.76,500/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,54,000/- is hereby enhanced to Rs.2,30,500/- 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. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount along with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment at the first instance and recover the same

from the 1st respondent. 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/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

rst/gbi

To

1.The II Judge,
Motor Accidents Claims Tribunal,
Court of Small Causes, Chennai.

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

+1 cc to Mr.Venkatesan Advocate sr22881

C.M.A.No.89 of 2018

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