

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.3128 OF 2019

T.Rajasekar

.. Appellant/Petitioner

Vs.

1. Vibunaa Bhavan
2. Reliance General Insurance Corporation Limited,
Reliance House, 6th Floor,
Nungambakkam, Chennai 6.

.. Respondents/Respondents

(1st respondent remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.04.2019 made in M.C.O.P.No.5827 of 2015 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant : Mr.M.Karthik for
Mr.R.Nalliyappan
For Respondents : Mr.S.Arunkumar for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 29.04.2019 made in M.C.O.P.No.5827 of 2015 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.5827 of 2015 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.12,00,000/- as compensation for the injuries sustained by him in the accident that took place on 03.07.2015.

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 Tata ace bearing

Registration No.TN 11 Y 5414 belonging to the first respondent and directed the second respondent, as insurer of the vehicle to pay a sum of Rs.3,60,000/- 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 fracture in the right knee and left distal radius in the accident. Due to the fracture, he could not continue his work as earlier. The appellant examined P.W.2/Doctor to prove the nature of injuries and disability suffered by him. The Tribunal ought to have applied multiplier method and granted compensation. The Tribunal erroneously reduced the percentage of disability from 40% to 20% and awarded a meagre sum of Rs.60,000/- towards disability. The appellant was working as carpenter and was earning a sum of Rs.750/- per day. The Tribunal has fixed a sum of Rs.12,000/- as notional income of the appellant per month and awarded a meagre sum of Rs.24,000/- (Rs.12,000/- x 2 months) towards loss of income. The Tribunal failed to award any amount under the head of future prospects. The compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, Mr.S.Arun kumar, learned counsel appearing for the second respondent- Insurance Company contended that in the absence of any evidence with regard to income of the appellant, the Tribunal has fixed notional income of the appellant at Rs.12,000/- per month and awarded a sum of Rs.24,000/- (Rs.12,000/- x 2) towards loss of income. The said amount is excessive and the Tribunal has given valid reason for reducing the percentage of disability. The appellant has not proved by any acceptable evidence that he could not do any work as he was doing earlier and he suffered 100% loss of earning capacity. Based on the evidence let in by the appellant, the Tribunal awarded excessive compensation under different heads and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent- Insurance Company and perused the entire materials on record.

8. From the materials available on record, it is seen that the appellant has contended that he suffered fracture in the left hand and right leg. To substantiate the injuries sustained by him, the appellant has examined P.W.2/Doctor, who deposed about the nature of injuries and treatment taken by the appellant and assessed disability at 40%. But the Tribunal has

fixed the disability at 20% and awarded Rs.60,000/- towards disability at the rate of Rs.3,000/- per percentage, on the ground that the disability assessed by the Doctor was not for the whole body. The said reasoning is erroneous. Considering the nature of injuries, evidence of P.W.2/Doctor and materials on record, the appellant is entitled to compensation for 40% disability at the rate of Rs.3,000/- per percentage. Thus, a sum of Rs.1,20,000/-(Rs.3,000/- x 40) is awarded towards disability at the rate of Rs.3,000/- per percentage for 40% disability. The appellant has not proved that he suffered functional disability. In the absence of any material evidence to substantiate the said contention, he is not entitled to compensation by applying multiplier method. The Tribunal has rightly fixed monthly income of the appellant at Rs.12,000/- per month but awarded only a sum of Rs.24,000/- towards loss of income for a period of two months, which is meagre. The appellant has taken treatment in the hospital as in-patient from 04.07.2015 to 10.07.2015. Considering the nature of injuries and period of treatment, the appellant would not have attended work for at least five months. Hence, a sum of Rs.60,000/-(Rs.12,000/- x 5 months) is awarded towards loss of income. The Tribunal has awarded a meagre sum of Rs.10,000/- towards extra nourishment, Rs.1,000/- towards damage to clothes and Rs.2,800/- towards attender charges and the same are hereby enhanced to Rs.20,000/-, Rs.3,000/- and Rs.10,000/- respectively. The amounts granted by the Tribunal under the other heads are just and reasonable and hence, they are hereby 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	60,000/-	1,20,000/-	enhanced
2.	Pain and sufferings	40,000/-	40,000/-	confirmed
3.	Medical Expenses	2,01,866/-	2,01,866/-	confirmed
4.	Loss of amenities	10,000/-	10,000/-	confirmed
5.	Transportation	10,000/-	10,000/-	confirmed
6.	Damage to clothes	1,000/-	3,000/-	enhanced
7.	Extra nourishment	10,000/-	20,000/-	enhanced

8.	Loss of income	24,000/-	60,000/-	enhanced
9.	Attendant charges	2,800/-	10,000/-	enhanced
	Total	Rs.3,59,666/-	Rs.4,74,866/-	enhanced by Rs.1,15,200/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,59,666/- is hereby enhanced to Rs.4,74,866/- 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/claimant 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. No costs.

Sd/-
Assistant Registrar(CO-MDU)

//True Copy//

Sub Assistant Registrar

vkr

To

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

Copy To

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

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.105935
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.106451

C.M.A.No.3128 of 2019

VGI (CO)
CS/15/12/2020