

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 4510 of 2019

Rajasekar

.. Appellant/Petitioner

Vs.

1. I.Althaf Ansari

2. National Insurance Co., Ltd.,
Motor Third Party Claims Office,
No. 751, Annasalai,
Chennai 600 002.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 14.08.2019, made in M.C.O.P.No.3501 of 2015, on the file of the II Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.R.Nalliyappan

For Respondents: Mr.J.Chandran (For R2)

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 award dated 14.08.2019, made in M.C.O.P.No.3501 of 2015, on the file of the II Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.By consent of both parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3.The appellant-claimant filed M.C.O.P.No.3501 of 2015, on the file of the II Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.02.2015.

4.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 insured with the 2nd respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.1,38,400/- as compensation to the appellant.

5.Not being satisfied with the amounts granted by the Tribunal in the award dated 14.08.2019, made in M.C.O.P.No.3501 of 2015, the appellant has come out with the present appeal.

6.Learned counsel appearing for the appellant contended that due to the accident, the appellant suffered serious injuries and fracture all over the body and P.W.2 - Doctor has assessed the disability of the appellant at 30%. The Tribunal, without considering the evidence of P.W.2 Doctor, the disability certificate issued by the Doctor, medical records and X-Ray, has erroneously reduced the percentage of disability to 15% and awarded only a sum of Rs.45,000/- at the rate of Rs.3,000/- per percentage, which is meager. The appellant was working as a Software Engineer at CTS, earning a sum of Rs.33,000/- per month and produced Ex.P8 - Salary Slip to substantiate the same. Due to the accident, the appellant has taken treatment as in-patient at Apollo Specialty Hospital from 07.02.2015 to 20.02.2015 and again from 08.07.2016 to 09.07.2016 and underwent surgery on 08.07.2016. The Tribunal has granted loss of income for only one month, which is very meager. The Tribunal without considering the medical bills worth Rs.55,100/-, awarded a meager amount of Rs.10,000/- towards medical expenses. In any event, the total compensation granted by the Tribunal is meager and prayed for enhancement of the same.

7.Per contra, learned counsel appearing for the 2nd respondent contended that the Tribunal, in the absence of worksheets and guidelines, has rightly reduced the percentage of disability to 15% and awarded compensation towards injuries. The Tribunal has rejected Ex.P6 - medical bills, holding that the surgery undergone by the petitioner is for his prolonged childhood problem and the same does not arise due to the accident and granted a sum of Rs.10,000/- towards medical expenses, which is just and reasonable. The total compensation awarded by the Tribunal is not meager. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

9.From the materials on record, it is seen that due to the

accident, the appellant suffered serious injuries and fracture at the right and left temporal bones and left side cerebral concussion. He has marked discharge summaries and documents as Exhibits to prove the injuries sustained by him in the accident and the treatment taken for the same. P.W.2 - Doctor has assessed the disability of the appellant as 30% partial permanent disability. The appellant has marked Exs.P12 and P13, disability certificate and X-rays to substantiate the same. The Tribunal, without considering the evidence of P.W.2 Doctor, the disability certificate issued by the Doctor, medical records and X-Ray, has erroneously reduced the percentage of disability to 15% and awarded only a sum of Rs.45,000/- at the rate of Rs.3,000/- per percentage. The appellant is entitled to compensation for 30% disability at the rate of Rs.3,000/- per percentage of disability. Hence, the amounts granted towards disability is modified to Rs.90,000/-. The appellant has taken treatment as in-patient at Apollo Specialty Hospital from 07.02.2015 to 20.02.2015 and again from 08.07.2016 to 09.07.2016 and underwent a surgery on 08.7.2016. The Tribunal has granted loss of income for one month. In view of injuries sustained in the accident and treatment taken for the same, he would not have worked atleast for two months. Hence, the appellant is entitled to compensation for loss of income for two months. Hence, a sum of Rs.70,148/- is granted towards loss of income. The appellant produced and marked medical bills as Ex.P6, in which he has availed Rs.55,100/- from insurance benefits and claimed the remaining sum of Rs.29,003/- towards medical expenses. The Tribunal without considering the medical bills, awarded a meager sum of Rs.10,000/-. The appellant is entitled to a sum of Rs.29,003/-, incurred towards medical expenses. Hence, the amount granted towards medical expenses is enhanced to Rs.29,000/-. The amounts granted by the Tribunal towards extra nourishment, transportation charges, damages to the clothes, attender charges and loss of amenities are very meager and the same are hereby enhanced to Rs.20,000/-, Rs.10,000/-, Rs.2,000/-, Rs.20,000/- and Rs.20,000/- respectively. 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.	Functional disability	45,000/-	90,000/-	enhanced
2.	Pain and suffering	25,000/-	25,000/-	confirmed

3.	Extra nourishment	5,000/-	20,000/-	enhanced
4.	Transport to hospital	5,000/-	10,000/-	enhanced
5.	Damages to clothes	500/-	2,000/-	enhanced
6.	Attender charges	2,800/-	20,000/-	enhanced
7.	Medical expenses	10,000/-	29,000/-	enhanced
8.	Future medical expenses	5,000/-	5,000/-	confirmed
9.	Loss of income	35,074/-	70,148/-	enhanced
10.	Loss of amenities	5,000/-	20,000/-	enhanced
	Total	1,38,374/-	2,91,148/-	
		rounded off to 1,38,400/-	rounded off to 2,91,200/-	Enhanced by Rs.1,52,800/-

10. In the result, the appeal is partly allowed and amount awarded by the Tribunal at Rs.1,38,400/- is enhanced to Rs.2,91,200/- along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court 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.3501 of 2019. 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

//True Copy//

Sub Assistant Registrar

Gsa

Copy To

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

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

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No. 10031

+1cc to Mr.J.Chandran, Advocate, S.R.No. 100298

C.M.A.No. 4510 of 2019

VG (CO)
GN(03/09/2020)



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