

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4742 of 2019

S.Selvaraji

.. Appellant/Petitioner

Vs.

1.B.Sudakar

(Remained ex-parte before the Trial Court)

2.United India Insurance Co. Ltd.,
Motor Third Party Hubb,
134, Silinghi Buildings, 4th Floor,
Greams Road, Thousand Lights,
Chennai - 600 006. .. Respondents /Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.07.2019 made in M.C.O.P.No.1016 of 2013 on the file of Motor Accident Claims Tribunal, Special Sub Court - I, Chennai.

For Appellant : Mr.R.Kalai Arasan

For R2 : Mr.S.Arunkumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant / claimant seeking enhancement of compensation granted by the Tribunal in the award dated 19.07.2019 made in M.C.O.P.No.1016 of 2013 on the file of Motor Accident Claims Tribunal, Special Sub Court - I, Chennai.

2.The appellant is claimant in M.C.O.P.No.1016 of 2013 on the file of Motor Accident Claims Tribunal, Special Sub

Court - I, Chennai. He filed the said claim petition claiming a sum of Rs.14,00,000/- as compensation for the injuries sustained by him in the accident that took place on 16.11.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the first respondent and directed the second respondent / Insurance Company being the insurer of the said motorcycle to pay a sum of Rs.2,44,750/- as compensation to the appellant / claimant.

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 Tribunal without considering the nature of injuries suffered by the appellant awarded a meagre amount of Rs.2,44,750/- as compensation. The appellant was a proprietor of M/s.Thirumalai Tyre Retreading Company and was earning a sum of Rs.1,50,000/- per month. Due to the injuries, he suffered 35% partial permanent disability and he could not continue his work as he was doing earlier. The appellant has examined P.W.2-Doctor to prove the disability and injuries suffered by him. The Tribunal reduced the percentage of disability to 15% and granted meagre amount as compensation for disability. The appellant has taken treatment in hospital as an in-patient and out-patient for more than 3 months. Ex.P11 to Ex.P15 were marked to prove the avocation and income of the appellant. The Tribunal erroneously fixed a meagre sum of Rs.20,000/- towards monthly income. The Tribunal has not awarded any amount for future medical expenses. 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 2nd respondent/Insurance Company contended that the Tribunal has given valid reasons for reducing the percentage of disability assessed by the Doctor from 35% to 15%. The Tribunal after considering all the records in proper perspective, rightly awarded the compensation, which is not meagre. 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 learned counsel appearing for the second respondent/Insurance Company and perused all the materials available on record.

8. From the materials available on record, it is seen that the appellant has contended that he was a proprietor of M/s.Thirumalai Tyre Retreading Company and was earning a sum of Rs.1,50,000/- per month. To substantiate the said contention, Ex.P11 / Copy of Provisional Registration certificate issued by Industries and Commerce Department, Kancheepuram for M/s.Thirumalai Tyre Retreading Company, Ex.P12 / Copy of Certificate of Registration for M/s.Thirumalai Tyre Retreading Company and Ex.P14 / Copy of Income Tax Returns for Assessment Year 2011 - 2012 were marked. The appellant failed to produce the Income Tax Returns for the assessment year 2012 - 2013. In the absence of any material evidence regarding income, the Tribunal has fixed monthly income of the appellant at Rs.20,000/- and granted compensation for two months i.e., Rs.40,000/- towards loss of earnings. The accident is of the year 2012. In the absence of material evidence, the monthly income fixed by the Tribunal is not meagre. From the records, it is seen that the appellant has taken treatment as in-patient for more than three months. Considering the nature of injuries and period of treatment, the appellant would not have attended his work for more than six months. Hence, the appellant is entitled to a sum of Rs.1,20,000/- (Rs.20,000/- x 6) as compensation towards loss of earning for six months. PW2 Doctor assessed the disability of the appellant at 35% and the Tribunal reduced the same to 15% by stating that PW2 / Doctor examined the appellant only after 5 years from the date of accident. The said reason given by the Tribunal is not proper. The appellant is entitled to compensation for 35%. Accordingly, a sum of Rs.1,05,000/- (Rs.3,000/- x 35%) is granted towards disability at the rate of Rs.3,000/- per percentage. The appellant contended that he has taken treatment in hospital as in-patient and an out-patient for more than 3 months. The Tribunal has awarded a sum of Rs.750/- towards attendant charges which is meagre and the same is enhanced to Rs.5,000/-. The Tribunal has not awarded any amount towards loss of amenities. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.10,000/- is granted towards loss of amenities. The amounts awarded by the Tribunal under 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	45,000	1,05,000	Enhanced
2.	Pain and sufferings	20,000	20,000	Confirmed

3.	Extra nourishment	10,000	10,000	Confirmed
4.	Transportation	27,000	27,000	Confirmed
5.	Hospital and medical expenses	81,978.50	81,978.50	Confirmed
6.	Attender charges	750	5,000	Enhanced
7.	Loss of earnings	40,000	1,20,000	Enhanced
8.	Loss of amenities	-	10,000	Granted
9.	Future prospectus	20,000	20,000	Confirmed
	Total	Rs.2,44,728.50/- is rounded off to Rs.2,44,750/-	Rs.3,98,978.50/- is rounded off to Rs.3,98,980	Enhanced by Rs.1,54,230/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,44,750/- is hereby enhanced to Rs.3,98,980/- 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 second respondent/Insurance Company 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. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Special Subordinate Judge - I,
The Motor Accident Claims Tribunal
Chennai.

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

+2cc to Mr.N.M.Muthurajan, Advocate, S.R.No.105645

+1cc to Mr.s.Arunkumar, Advocate, S.R.No.105478

C.M.A.No.4742 of 2019

RSI (CO)
CB(20/08/2020)



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