

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2583 of 2018

Muthaiyan

.. Appellant/Petitioner

Vs.

1.Krithika @ Kirithika Ravi

2.Bharti Axa General Insurance Co., Ltd.,
Metro Plaza, 2nd Floor,
No.164, Annasalai,
Chennai 600 021.

.. Respondents

(R1 remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 26.04.2018 made in M.C.O.P.No.5213 of 2015 on the file of the Motor Accidents Claims Tribunal, (Special Sub Court No.2, Motor Accident Claims Petitions) Small Causes Court), Chennai.

For Appellant : Ms.A.Subadra

For R2 : Ms.K.Poomalai

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 26.04.2018 made in M.C.O.P.No.5213 of 2015 on the file of the Special Sub Court No.2, (Motor Accident Claims Tribunal), Chennai.

2.The appellant/claimant filed M.C.O.P.No.5213 of 2015 on the file of the Special Sub Court No.2, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.26,90,000/- as compensation for the injuries sustained by him in the accident that took place on 06.04.2015.

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 car belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.2,63,200/- as compensation to the appellant.

4. Not being satisfied with the amounts granted by the Tribunal in award dated 26.04.2018 made in M.C.O.P.No.5213 of 2015, the appellant/claimant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that the appellant has examined the Doctor as P.W.2 and proved the disability suffered by him as 45%. The Tribunal erred in reducing the same to 30%, without any basis. The appellant was doing milk vending business and was earning a sum of Rs.20,000/- per month. The Tribunal erroneously fixed the monthly income of the appellant at Rs.6,500/-. The Tribunal erred in not granting any amount for loss of earning power. The appellant was taking treatment from 06.04.2015 to 11.04.2015 in Government Medical College Hospital, Villupuram and from 20.04.2015 to 04.05.2015 in Koti Orthopaedic and Trauma Care Speciality Hospital, Villupuram. The Tribunal has not awarded any amount for attender charges and the amounts granted by the Tribunal under different heads are very meager and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant did not let in any evidence to substantiate his claim with regard to avocation and income. In the absence of any materials, the Tribunal following the judgment of the Hon'ble Apex Court reported in 2014 1 TNMAC 459 (SC) [Syed Sadiq vs. Divisional Manager, United India Insurance Co.,], fixed monthly income of the appellant at Rs.6,500/- per month, which is proper. The appellant has not proved any functional disability and therefore, he is not entitled to any amount towards loss of earning capacity. The Tribunal has awarded Rs.13,000/- towards loss of income for two months, which is proper. The appellant has examined P.W.2-Doctor who certified that the appellant suffered 45% disability. In the cross examination, P.W.2-Doctor has admitted that he has certified 45% disability directly including fracture below knee, while there is no mention of fracture below knee. In view of the same, the Tribunal has rightly reduced the percentage of disability from 45% to 30%, which is in order. The amounts awarded by the Tribunal under different heads are not meager and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on records.

8. According to the appellant, he was doing milk vending business and was earning a sum of Rs.20,000/- per month. The appellant did not file any documents to prove the avocation and income. In the absence of any evidence to prove the same, the Tribunal following the ratio in the judgment of the Hon'ble Apex Court reported in 2014 1 TNMAC 459 (SC), referred to above, fixed the notional income of the appellant at Rs.6,500/- per month. Considering the fact that the accident occurred on 06.04.2015, the said amount is meager and hence, the monthly income of the appellant is fixed at Rs.8,000/-. The appellant has not produced any evidence to show that he suffered functional disability and he is unable to carry on milk vending business, as he was doing earlier. In view of the same, the Tribunal has not awarded any amounts for future earning capacity. On the other hand, the Tribunal has awarded a sum of Rs.13,000/- for loss of income for two months. The appellant is entitled for the loss of income during and after treatment period of four months. Hence, a sum of Rs.32,000/- [Rs.8,000/- x 4] is granted under the said head.

9. From the materials available on record, it is seen that the appellant was taking treatment from 06.04.2015 to 11.04.2015 in Government Medical College Hospital, Villupuram and from 20.04.2015 to 04.05.2015 in Koti Orthopaedic and Trauma Care Speciality Hospital, Villupuram. Hence, the amount of Rs.3,000/- awarded towards transportation is hereby enhanced to Rs.5,000/-. The Tribunal has not awarded any amounts for attender charges. Hence, a sum of Rs.20,000/- is granted for attender charges. P.W.2-Doctor has certified that the appellant suffered 45% disability. The Tribunal reduced the same to 30%, on the ground that P.W.2-Doctor has certified 45% disability including fracture below knee, while there was no fracture. However, reduction of 15% for the said reason is excessive. Hence, the appellant is entitled to a sum of Rs.1,20,000/- towards 40% disability at the rate of Rs.3,000/- per percentage. The amounts granted by the Tribunal under all other heads are just and reasonable and 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
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1.	Compensation for disability	90,000/-	1,20,000/-	enhanced
2.	Pain and suffering	30,000/-	30,000/-	confirmed
3.	Loss of income	13,000/-	32,000/-	enhanced
4.	Transportation	3,000/-	5,000/-	enhanced
5.	Extra nourishment	30,000/-	30,000/-	confirmed
6.	Damage to clothes	3,000/-	3,000/-	confirmed
7.	Medical expenses	49,200/-	49,200/-	confirmed
8.	Mental agony	15,000/-	15,000/-	confirmed
9.	Loss of amenities	30,000/-	30,000/-	confirmed
10.	Attender charges	-	20,000/-	granted
	Total	2,63,200/-	3,34,200/-	enhanced by Rs.71,000/-

10. In the result, the appeal is partly allowed and award granted by the Tribunal at Rs.2,63,200/- is enhanced to Rs.3,34,200/- along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount 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, to the credit of M.C.O.P.No.5213 of 2015. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Special Subordinate Judge No.2, to deal with MCOP CASES,
(Motor Accident Claims Tribunal) Small Causes Court, Chennai.

2.The Record Keeper,
V.R.Section, High Court, Chennai.

+1 cc to Mr.K.Poomalai, Advocate SR.No.2657

+1 cc to Mr.M.Malar, Advocate SR.No.3037

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CA(CO)

CSL/02.04.2019



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