

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1195 of 2013

George

.. Appellant/Claimant

Vs.

1.D.Shanthi

(R1 set exparte in the Trial Court)

2.The New India Assurance Co. Ltd.,
No.45, Moore Street, V Floor,
Chennai - 600 001.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 26.06.2012 made in M.C.O.P.No.4402 of 2008 on the file of Motor Accident Claims Tribunal, III Judge, Second Court of Small Causes Court, Chennai.

For Appellant : Mr.F.Terry Chella Raja for
Ms.M.Malar

For R2 : Ms.R.Sreevidhya
R1 : exparte

J U D G M E N T
सत्यमेव जयते

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 26.06.2012 made in M.C.O.P.No.4402 of 2008 on the file of Motor Accident Claims Tribunal, Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.4402 of 2008 on the file of Motor Accident Claims Tribunal, Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 23.07.2008. Value of the

claim has been amended as Rs.8,00,000/- vide order of this Court dated 08.10.2012 made in M.P.No.1 of 2012 in C.M.A.Sr.No.79851 of 2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the car belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.4,37,600/- as compensation to the appellant.

4.Not being satisfied with the quantum of compensation 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 was aged 24 years at the time of accident and was earning a sum of Rs.200/- per day by working as a coolie. The Tribunal fixed a meagre sum of Rs.4,500/- as monthly income of the appellant. The appellant sustained comminuted fracture of proximal 1/3rd of right tibia and fracture of distal end of radius and that the appellant is limping, he can walk only with the help of walker, cannot fold his right leg and facing difficulty to walk fast and climb stairs. PW2/Doctor has assessed the percentage of disability suffered by the appellant as 65% but the Tribunal reduced the same to 30% and granted compensation towards loss of earning capacity. The amounts awarded by the Tribunal under different heads are also meagre and hence prayed for enhancement of compensation.

6.Per contra, learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has failed to prove his age, avocation and income. In the absence of material evidence, the Tribunal fixed notional monthly income of the appellant at Rs.4,500/-, which is not meagre. PW2/Doctor has assessed that the appellant has suffered 65% disability. The Tribunal, considering the nature of injuries, reduced the percentage of disability to 30% and awarded compensation towards loss of earning capacity by adopting multiplier method. The appellant suffered only fracture in the right leg and multiplier method adopted by the Tribunal is not correct. 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 2nd respondent/Insurance Company and perused all the materials

available on record.

8.It is the contention of the appellant that in the accident he sustained grievous injuries and unable to work as he was doing earlier before the accident. The appellant examined himself as P.W.1 and Doctor as P.W.2 and deposed to that effect. PW2/Doctor has assessed the disability of the appellant as 65% for whole body and issued Ex.P5/disability certificate. The appellant has also filed Ex.P3/discharge summary and Ex.P4/wound certificate to show the nature of injuries and fracture sustained by him in the accident. According to appellant in the accident, he suffered comminuted fracture of proximal 1/3rd right tibia and fracture of distal end of radius and that the appellant is limping, he can walk only with the help of walker, cannot fold the right leg and facing difficulty to walk fast and climb stairs. In view of the same, the Tribunal has applied multiplier method. Considering the nature of injuries, the Tribunal reduced the percentage of disability to 30%, which is proper. The appellant contended that he was working as a coolie and was earning a sum of Rs.200/- per day at the time of accident. The Tribunal fixed age of the appellant as 23 years. Considering the age of the appellant, the Tribunal fixed monthly income at Rs.4,500/-, which is meagre. The accident is of the year 2008. Hence, a sum of Rs.5,500/- is fixed as monthly income of the appellant. The Tribunal applied multiplier '18' which is proper. In view of the same, the amount awarded by the Tribunal towards loss of earning capacity is modified to Rs.3,56,400/- (5,500 x 12 x 18 x 30/100).

9.According to the appellant, he has taken treatment as in-patient in Government Royapettah Hospital, Chennai from 23.07.2008 to 08.09.2008 for a period of 46 days. The amounts awarded by the Tribunal towards extra nourishment and attendant charge are meagre. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards extra nourishment and attendant charges are enhanced to Rs.25,000/- each. The amount awarded by the Tribunal towards loss of amenities is excessive and hence the same is hereby reduced to Rs.20,000/-. The amounts awarded by the Tribunal under other heads are just and reasonable and hence the same 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 or reduced
1.	Loss of income	54,000	54,000	Confirmed
2.	Transportation	10,000	10,000	Confirmed
3.	Extra nourishment	10,000	25,000	Enhanced
4.	Damages to clothes	2,000	2,000	Confirmed
5.	Medical expenses	10,000	10,000	Confirmed
6.	Attendant charges	10,000	25,000	Enhanced
7.	Loss of amenities	25,000	20,000	Reduced
8.	Pain and sufferings	25,000	25,000	Confirmed
9.	Loss of earning capacity	2,91,600	3,56,400	Enhanced
	Total	Rs.4,37,600/-	Rs.5,27,400/-	Enhanced by Rs.89,800/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,37,600/- is hereby enhanced to Rs.5,27,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant 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 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 is permitted to

withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mtl

To

1. The Motor Accident Claims Tribunal III Judge,
IInd Small Causes Court, Chennai.

Copy to

The Section Officer

V.R.Section

High Court, Chennai.

+1 cc to Mr.R.Sreevidhya Advocate sr22090

+1 cc to M.Malar Advocate sr22078

C.M.A.No.1195 of 2013

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