

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.2038 OF 2010

Ganesh Kumar

.. Appellant/Petitioner

Vs.

1.G.Sivakumar

2.National Insurance Company Limited,
No.751, Anna Salai,
Chennai - 600 002.

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.07.2009 made in M.C.O.P.No.2599 of 2004 on the file of Motor Accident Claims Tribunal, V Judge, Small Causes Court, Chennai.

For Appellant : Mr.A.Shanmugaraj

For R2 : Ms.K.Saraswathi for
Mr.C.R.Krishnamoorthy

For R1 : No Appearance

सत्यमेव जयते
J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 31.07.2009 made in M.C.O.P.No.2599 of 2004 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.2599 of 2004 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.10.2003.

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 cum owner of the car belonging to the 1st respondent and directed both the respondents 1 & 2 to jointly and severally, pay a sum of Rs.1,14,050/- 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 18 years at the time of accident, he was studying XII standard and was earning a sum of Rs.1,500/- per month, by doing Radio-Mechanic as part time job. The appellant sustained fracture and dislocation in right hip and fracture at left ankle and multiple injuries all over the body. P.W.2/Doctor has assessed the disability of the appellant as 45%, but the Tribunal awarded only a sum of Rs.40,000/- towards permanent disability of 45%. The Tribunal has not awarded any amount towards future loss of earning. 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 after considering the materials available on record, has awarded just compensation. 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 he has suffered dislocation of right hip, fracture of medial malleolus left and multiple injuries all over the body. To prove the nature of injuries, the appellant examined P.W.2/Doctor. P.W.2/Doctor examined the appellant and assessed the disability of the appellant as 45%. The Tribunal reduced the disability to 40% and awarded a sum of Rs.40,000/- towards disability, at the rate of Rs.1,000/- per percentage holding that the percentage of disability assessed by the doctor is on the higher side. The

reason given by the Tribunal for reducing the disability is not correct. The accident is of the year 2003 & Rs.1,000/- granted per percentage is proper. Therefore, the appellant is entitled to compensation for 45%. Accordingly, a sum of Rs.45,000/- (Rs.1,000/- x 45%) is awarded towards disability at the rate of Rs.1,000/- per percentage of disability.

9. According to the appellant, he was studying XII standard at the time of the accident and was earning a sum of Rs.1,500/- per month by doing Radio-Mechanic as part time job. The appellant has taken treatment as in-patient in Government General Hospital, Ooty from 12.10.2003 to 13.10.2003 and subsequently, he has taken treatment as in-patient in Bone and Joint Research Centre, Chennai from 14.10.2003 to 27.10.2003. The amounts awarded by the Tribunal towards transport to hospital and extra nourishment are meagre. Considering the period of treatment and nature of injuries sustained by the appellant, the amounts awarded by the Tribunal towards transport to hospital and extra nourishment are hereby enhanced to Rs.5,000/- and Rs.7,500/- respectively. 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.	Transport to hospital	2,050	5,000	Enhanced
2.	Extra nourishment	3,000	7,500	Enhanced
3.	Medical expenses	54,000	54,000	Confirmed
4.	Pain and sufferings	10,000	10,000	Confirmed
5.	Attendant charges	5,000	5,000	Confirmed
6.	Permanent disability	40,000	45,000	Enhanced
	Total	Rs.1,14,050/-	Rs.1,26,500/-	Enhanced to Rs.12,450/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,14,050/- is hereby enhanced to Rs.1,26,500/- 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. Both the 1st respondent as well as the 2nd respondent/Insurance Company are directed to deposit the enhanced award amount now determined by this Court along with interest and costs, jointly and severally, 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.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mtl

To

1. The V Judge,
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.
2. The Section Officer
V.R.Section, High Court, Chennai.

+lcc to Mr.A.Shanmugaraj, Advocate, S.R.No.21343

+lcc to Mr.C.R.Krishnamoorthy, Advocate, S.R.No.21056

सत्यमेव जयते

C.M.A.No.2038 of 2010

CS/18/09/2020

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