

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.2143 OF 2010

J.Muralidharan

.. Appellant/Petitioner

Vs.

1. N.Manivel

2. M/s.United India Insurance Co.Limited,
C/o.Motor Third Party Claims Office,
No.38, Anna Salai,
Chennai-600 002.

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.01.2010 made in M.C.O.P.No.3409 of 2005 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai.

For Appellant : Mr.T.G.Balachandran

For R2 : Mr.C.Paranthaman

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 18.01.2010 made in M.C.O.P.No.3409 of 2005 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai.

2.The appellant is the claimant in M.C.O.P.No.3409 of 2005 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai. He filed the above claim petition, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 14.07.2005.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to rash and negligent driving by the driver of the lorry belonging to the first respondent and directed the second

respondent-Insurance Company, being insurer of the lorry to pay a sum of Rs.1,65,000/- as compensation to the appellant/claimant.

4. Not being satisfied with the amounts awarded by the Tribunal, the appellant/claimant has come out with the present appeal for enhancement of compensation.

5. The learned counsel appearing for the appellant contended that P.W.2/Doctor assessed the disability suffered by the appellant as 45% but the Tribunal reduced the percentage of disability from 45% to 40% and awarded a meagre sum of Rs.80,000/- towards disability. The Tribunal ought to have adopted multiplier method for granting compensation towards disability. The appellant was working as Marketing Supervisor in Adyar Report, Chennai and was earning a sum of Rs.4,500/- per month, but the Tribunal awarded a very meagre sum of Rs.9,000/- towards loss of income for two months. The Tribunal ought to have granted compensation for loss of income for five months. Due to the injuries and disability, the appellant has taken treatment in the G.S Hospital, Chennai, as in-patient for 13 days and the Tribunal has not awarded any amount towards attendant charges and loss of amenities. The amounts awarded by the Tribunal towards transportation, extra nourishment, pain and sufferings and medical expenses are meagre and therefore, prayed for enhancement of compensation.

6. Per contra, Mr.C.Paranthaman, learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal reduced the percentage of disability from 45% to 40% on the ground that assessment of disability by P.W.2/Doctor is on the higher side. The appellant failed to prove that he suffered functional disability and hence, he is not entitled to compensation by adopting multiplier method. The appellant has not produced any document to show that he lost his income during the treatment period. In such circumstances, the Tribunal accepted the monthly income as claimed by the appellant at Rs.4,500/- and awarded a sum of Rs.9,000/- as compensation towards loss of income for two months, which is excessive. The appellant is not entitled to any amount towards attendant charges and loss of amenities. The amounts awarded by the Tribunal under different heads are not meagre and 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/claimant as well as the second respondent/Insurance Company and perused the materials available on record.

8. It is the contention of the appellant that he suffered fracture in left tibia and multiple injuries all over the body.

P.W.2/Doctor assessed the disability of the appellant as 45%. The 2nd respondent did not let in any contra evidence to disprove the evidence of P.W.2/Doctor and ExP10/disability certificate. The Tribunal reduced the percentage of disability to 40% on the ground that assessment of disability by P.W.2/Doctor is on the higher side and awarded a sum of Rs.80,000/- (Rs.2,000 X 40%) towards disability by fixing Rs.2,000/- per percentage of disability. The reason given by the Tribunal for reducing the percentage of disability is not correct. The appellant is entitled to compensation for 45% of disability as there is no contra evidence. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.90,000/- (Rs.2,000 X 45% of disability). The appellant has taken treatment in the G.S Hospital, Chennai, as in-patient for 13 days and the Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the nature of injuries and period of treatment taken by the appellant, he is entitled to a sum of Rs.3,900/- (Rs.300/- X 13 days) towards attendant charges at the rate of Rs.300/- per day and a sum of Rs.10,000/- towards loss of amenities.

9. According to the appellant he was working as a Marketing Supervisor in Adyar Report, Chennai, at the time of the accident and was earning a sum of Rs.4,500/- per month and to prove the same, he has produced Ex.P8/salary certificate. The Tribunal considering the evidence of appellant and Ex.P8/salary certificate, fixed a sum of Rs.4,500/- per month as notional income of the appellant. The accident occurred in the year 2005 and the monthly income fixed by the Tribunal is proper. Due to the injuries suffered by the appellant, he would not have attended his work atleast for a period of four months. Hence, a sum of Rs.18,000/- (Rs.4,500/- X 4 months) is awarded towards loss of income. The amounts awarded by the Tribunal towards transportation and extra nourishment are meagre and the same are 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 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.	Loss of income	9,000/-	18,000/-	enhanced
2.	Transport	2,000/-	5,000/-	enhanced
3.	Extra nourishment	3,000/-	7,500/-	enhanced

4.	Damages to clothes	500/-	500/-	confirmed
5.	Medical expenses	60,500/-	60,500/-	confirmed
6.	Pain & sufferings	10,000/-	10,000/-	confirmed
7.	Disability	80,000/-	90,000/-	enhanced
8.	Loss of amenities	-	10,000/-	granted
9.	Attendant charges	-	3,900/-	granted
	Total	Rs.1,65,000/-	Rs.2,05,400/-	enhanced by Rs.40,400/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,65,000/- is hereby enhanced to Rs.2,05,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court together 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 order to the credit of M.C.O.P.No.3409 of 2005 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by filing separate petition before the Tribunal. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gbi

To

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

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Copy To

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

+2cc to Mr.C.Paranthaman, Advocate, S.R.No.18577
+1cc to Mr.T.G.Balachandran, Advocate, S.R.No.19017

C.M.A.No.2143 of 2010

BR(CO)
CS/01/02/2021



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