IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 31.07.2020
CORAM
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE
C.M.A.No.1321 of 2013

Mahendra Kumar ... Appellant/Petitioner

..Vs..

1.N.Aswin
(R1 remained exparte before the Tribunal)
2.National Insurance Co. Ltd.,
No.751, Anna Salai, V Floor,
Chennai - 2. ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 19.01.2011 and made in MCOP.No.4840 of 2003 on the file of the Motor Accident Claims Tribunal, Chennai (In the Court of II Small Causes Court, Chennai).

For Appellant : Mr.F.Terry Chella Raja
For Respondent 2 : Mr.J.Chandran
R1 set exparte

J U D G M E N T

[This Appeal has been taken up for hearing through Video conferencing]

This Appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 19.01.2011 passed by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai in MCOP.No.4840 of 2003.

2. The Appellant being unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award has filed this appeal seeking for enhancement.

3. The finding of the Tribunal with regard to the negligence of the driver of the insured vehicle has now attained finality, since no appeal has been filed by the second respondent Insurance Company.

4. Heard Mr.F.Terry Chella Raja, learned counsel for the Appellant and Mr.J.Chandran, learned counsel for the second respondent. The first respondent remained exparte both before the Tribunal as well as this Court.

5. The question that needs to be decided by this Court is whether the Appellant/claimant is entitled for any enhancement of compensation or not.

6. The Tribunal under the impugned Award has directed the second respondent Insurance Corporation to pay the Appellant/claimant a sum of Rs.2,63,000/- together with interest and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Permanent Disability	90,000/-
Loss of Income during Treatment	9,000/-
Transport Charges	1,000/-
Extra Nourishment	2,000/-
Damage to clothes and articles	1,000/-
Medical Expenses	1,40,000/-
Pain and Suffering	20,000/-
Total	2,63,000/-

7. Before the Tribunal, the Appellant/claimant has filed 17 documents which were marked as Ex.P1 to Ex.P17 and two witnesses were examined on his side, namely the claimant himself as PW1 and the doctor who examined him as PW2. On the side of the second respondent Insurance Company, neither any document was filed nor any witness examined.

8. The discharge summaries issued by the Apollo Hospital which were marked as Ex.P4 & Ex.P5 reveals that the Appellant/claimant was hospitalised between 22.06.2006 and 11.07.2003 and was diagnosed for Type I Compound Trimalleolar fracture right ankle and haemathrosis left knee and bicondylar fracture left tibia with hypertensive. Surgeries were also performed on the Appellant/claimant on 24.06.2003, 30.06.2003 and 09.07.2003.

9. The Doctor, PW2 who examined the Appellant/claimant assessed the disability of the Appellant/claimant at 55% disability. But the Tribunal did not accept the same and has fixed the disability of the Appellant/claimant at 45%. Based on the said disability, the Tribunal fixed the disability compensation at Rs.90,000/- calculated at Rs.2,000/- per percentage of disability. This Court is of the considered view that it would be appropriate to assess the disability of the Appellant at 55% as assessed by the PW2 doctor. Accordingly, the percentage of disability is fixed at 55%. The contention of the Appellant in this Appeal is that the Tribunal ought to have applied multiplier method while assessing the compensation towards permanent disability instead of fixing the same on percentage basis. This contention cannot be accepted by this Court in view of the fact that no evidence has been placed before the Tribunal by the Appellant/claimant who claimed to be a Jewellery shop owner that because of the injuries sustained by him, there was a loss of income throughout and he had to close down his business. Therefore, in the considered view of this Court, the Tribunal has rightly applied percentage basis for the purpose of calculating the compensation towards permanent disability. Accordingly, the Compensation awarded by the Tribunal at Rs.90,000/- for 45% disability at Rs.2,000/- per percentage of disability is enhanced to Rs.1,10,000/- for 55% disability at Rs.2,000/- per percentage of disability is fixed by this Court.

10. The Appellant/claimant was aged 46 years and was an owner of a jewellery shop in the name and style of Sri Navarathna Jewellery Shop, T,Nagar, Chennai. No contra evidence has been produced by the second respondent insurance company to disprove the contention of the Appellant/claimant that he was a Jewellery shop owner. However, the Tribunal fixed the monthly income of the Appellant/claimant at Rs.3,000/- on notional basis, since the Appellant/claimant did not produce any documentary evidence in support of his monthly income.

11. Admittedly, the Appellant/claimant was hospitalised for a long period of time, and had to undergo surgeries, as seen from the discharge summaries issued by the Hospital. During the said period, his business would certainly have suffered loss of income due to his absence. The Tribunal under the impugned award has awarded Rs.9,000/- as compensation to the Appellant/claimant towards loss of income during the period of treatment which according to this Court is too low. The Appellant/claimant had to undergo three surgeries and having been hospitalised for a long period of time, the Tribunal ought to have awarded a higher

compensation towards loss of income during the period of treatment. The Tribunal has assessed the loss of income during the period of treatment on the basis that the Appellant/claimant would have been unable to do his regular business for a period of three months. In the considered view of this Court, three month period is too low and six month period will be an adequate period. Accordingly, the loss of income during the period of treatment is taken for a period of six months instead of three months fixed by the Tribunal. Accordingly, the compensation towards loss of income during the period of treatment to the Appellant is enhanced to Rs.18,000/- from Rs.9,000/- calculated at Rs.3,000/- per month for the period of 6 months.

12. The compensation awarded by the Tribunal under the heads transportation charges, extra nourishment, Damages to clothes and articles and pain and suffering is also low, considering the nature of injuries sustained by the Appellant/claimant and his avocation. Accordingly, this Court enhances the compensation towards transportation charges from Rs.1,000/- to Rs.5,000/-, Extra Nourishment from Rs.2,000/- to Rs.5,000/-, Damages to clothes and articles from Rs.1,000/- to Rs.2,000/- and pain and suffering from Rs.20,000/- to Rs.30,000/-.

13. The Tribunal has awarded a sum of Rs.1,40,000/- as compensation towards medical expenses which in the considered view of this Court is a just compensation and does not call for any interference. Accordingly, the same is confirmed.

14. The Tribunal has also not awarded any compensation towards loss of amenities to the Appellant/claimant which he is legally entitled to in view of the grievous injuries sustained by him as a result of the accident. This court considering the year of the accident fixes the same at Rs.15,000/-.

15. For the foregoing reasons, the amount awarded by the Tribunal under the impugned award is enhanced from Rs.2,63,000/- to Rs.3,25,000/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Permanent Disability	90,000/-	1,10,000/-
Loss of Income during Treatment	9,000/-	18,000/-
Transport Charges	1,000/-	5,000/-

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Extra Nourishment	2,000/-	5,000/-
Damage to clothes and articles	1,000/-	2,000/-
Medical Expenses	1,40,000/-	1,40,000/-
Pain and Suffering	20,000/-	30,000/-
Loss of Amenities	Nil	15,000/-
Total	2,63,000/-	3,25,000/-

Conclusion:

16. In the result, this appeal is partly allowed by enhancing the amount awarded by the Tribunal from Rs.2,63,000/- to Rs.3,25,000/-. The second respondent Insurance Company is directed to deposit the modified award amount, after deducting the amount already deposited if any, together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs to the credit of MCOP.No.4840 of 2003 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Appellant/claimant is permitted to withdraw the award amount along with accrued interest lying to the credit of MCOP.No.4840 of 2003 by filing an appropriate application. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To
1. The II Judge,
Court of Small Causes, Chennai.

Copy to

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

+1 cc to Mr.J.Chandran Advocate sr25824

gj(co)
aa10/11/2020