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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1505 of 2013

M.Rajendran

... Appellant/Petitioner

Vs.

1.P.Shanmugakani

(R1 remained exparte before Tribunal)

2.The United India Insurance Company Limited,
No.134, Greams Road, Silingi Building,
IV-Floor, HUB,
Chennai - 600 006.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.10.2009 made in M.C.O.P.No.3417 of 2003 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.A.R.Ponnusamy
for Mr.Anand and Suryas

For R2 : Mr.D.Bhaskaran

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 29.10.2009 made in M.C.O.P.No.3417 of 2003 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

3.The appellant is the claimant in M.C.O.P.No.3417 of 2003 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.1,50,000/- as compensation for the injuries sustained by him in the accident that took place on 06.07.2003.



4.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 lorry belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.70,000/- as compensation to the appellant.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellant contended that in the accident the appellant sustained fracture at Right Ribs 2 to 5, head injuries, injury at right leg and multiple injuries all over the body. To prove the nature of injuries and disability, the appellant examined himself as P.W.1 and examined two Doctors as P.W.2 and P.W.3. P.W.2 & P.W.3/Doctors examined the appellant and certified that appellant suffered 25% disability each. The Tribunal has awarded only a meagre sum of Rs.45,000/- towards disability. The Tribunal ought to have awarded a sum of Rs.2,000/- per percentage of disability for 50% of disability. The appellant was working as Finner at Allumuniyam Company Limited, Chennai and was earning a sum of Rs.3,000/- per month. Due to the injuries sustained by the appellant, he has not attended his work for a period of six months. But, the Tribunal has awarded compensation towards loss of income only for three months. The appellant has taken treatment as inpatient at Government Stanley Hospital from 06.07.2003 to 14.07.2003 and the compensation awarded by the Tribunal towards transportation, extra nourishment, pain and sufferings are meagre. The Tribunal has not awarded any amounts towards attendant charges and loss of amenities. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation.

7.Per contra, learned counsel appearing for a the 2nd respondent-Insurance Company contended that P.W.2 & P.W.3/Doctors assessed disability of the appellant only for particular part of the body and hence, the compensation awarded by the Tribunal towards disability at Rs.45,000/- is not meagre. The appellant has not filed any material evidence to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed monthly income of the appellant at Rs.3,000/- and awarded compensation towards loss of income for three months and the same is not meagre. The appellant suffered only simple injuries in the accident and the total compensation awarded by the Tribunal at Rs.70,000/- is excessive. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

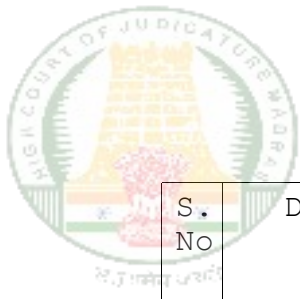


8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

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9. From the materials available on record, it is seen that in the accident the appellant sustained fracture at Right Ribs 2 to 5, head injuries, injury at right leg and multiple injuries all over the body. To prove the nature of injuries and disability, the appellant examined himself as P.W.1 and examined two Doctors as P.W.2 and P.W.3. P.W.2/Doctor examined the appellant and certified that appellant suffered 25% physical disability and P.W.3/Doctor examined the appellant and certified that appellant suffered 25% dental disability. The Tribunal considering the evidence of P.W.2 & P.W.3/Doctors, Exs.P3 & P5/disability certificates, awarded a sum of Rs.45,000/- towards disability and the same is not correct. The 2nd respondent has not let in any contra evidence to disprove the evidence of P.W.2 & P.W.3/Doctors and Exs.P3 & P5/disability certificates. The accident occurred in the year 2003. The appellant is entitled to a sum of Rs.1,500/- per percentage for 50% of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.75,000/- (Rs.1,500/- X 50% of disability). The appellant has taken treatment as inpatient at Government Stanley Hospital from 06.07.2003 to 14.07.2003 for 9 days. The Tribunal has not awarded any amount towards attendant charges. The appellant is entitled to a sum of Rs.3,000/- towards attendant charges. Considering the nature of injuries and period of treatment taken by the appellant, the amount awarded by the Tribunal towards extra nourishment is meagre and the same is enhanced to Rs.5,000/-.

10. From the materials on record, it is the contention of the appellant that he was working as Finner at Allumuniyam Company Limited, Chennai and was earning a sum of Rs.3,000/- per month and due to the injuries sustained by him, he has not attended his work for a period of six months. The appellant has not produced any document to show that he has not attended his work for six months. Therefore, the compensation awarded by the Tribunal towards loss of income for three months is not meagre and the same is confirmed. The amounts awarded by the Tribunal towards transportation, damages to clothes, medical expenses and pain and sufferings are not meagre and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	45,000/-	75,000/-	Enhanced
2.	Pain and sufferings	10,000/-	10,000/-	Confirmed
3.	Loss of income	9,000/-	9,000/-	Confirmed
4.	Medical expenses	1,000/-	1,000/-	Confirmed
5.	Extra nourishment	3,000/-	5,000/-	Enhanced
6.	Transportation	1,500/-	1,500/-	Confirmed
7.	Damages to clothes	500/-	500/-	Confirmed
8.	Attendant charges	-	3,000/-	Granted
	Total	Rs.70,000/-	Rs.1,05,000/-	Enhanced by Rs.35,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.70,000/- is hereby enhanced to Rs.1,05,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, excluding the period of dismissal for default from 23.10.2007 to 20.03.2009. The 2nd respondent-Insurance Company is directed to deposit the 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, to the credit of M.C.O.P.No.3417 of 2003 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar



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To

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

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to M/s.Anand and Suryas, Advocate Sr.41941

C.M.A.No.1505 of 2013

vba[co]
srg 12/08/2021