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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 1001 of 2016

J. Vivek

.. Appellant/Claimant

Vs.

1.Sixtus Stanly

2.The Branch Manager,
National Insurance Co. Ltd.,
No.751, Anna Salai,
Chennai 600 002.

.. Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 15.12.2015, made in M.C.O.P. No. 7207 of 2013, on the file of the IV Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. R. Nalliyappan

For Respondents: Mr. S. Vadivel (for R2)

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 15.12.2015, made in M.C.O.P. No. 7207 of 2013, on the file of the IV Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-claimant filed M.C.O.P. No. 7207 of 2013, on the file of the IV Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 23.11.2013.

3.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 Car belonging to the 1st respondent and directed the 2nd respondent as insurer of



the vehicle to pay a sum of Rs.1,90,600/- as compensation to the appellant.

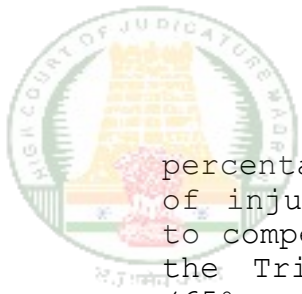
4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 15.12.2015, made in M.C.O.P. No. 7207 of 2013, the appellant has come out with the present appeal.

5. Learned counsel appearing for the appellant contended that due to the accident, the appellant sustained grievous injuries, fracture over the right leg and multiple injuries all over the body and took treatment as in-patient in Miot Hospital, Chennai, from 24.11.2013 to 13.12.2013 and produced Ex.P2 - Discharge Summary to prove the same. P.W.2 - Doctor assessed disability of the appellant as 65% and issued disability certificate which is marked as Ex.P8. The Tribunal ought to have applied multiplier method, instead of percentage method to arrive at the compensation towards disability and loss of earning power. The Tribunal without assigning any reasons, reduced the percentage of disability suffered by the appellant from 65% to 30% and awarded meagre amount as compensation towards disability. The amounts awarded by the Tribunal towards loss of income, transportation, extra nourishment, loss of amenities, future medical expenses and pain and suffering are meagre and prayed for enhancement of the compensation.

7. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that in the absence of any evidence by the appellant to prove that he suffered functional disability, the Tribunal rightly considering the nature of injuries and evidence of P.W.2- Doctor, reduced the percentage of disability from 65% to 30%, on the ground that P.W.2 Doctor has not filed any worksheet to prove the assessment of disability and awarded compensation under the head, disability by applying percentage method. The Tribunal has awarded compensation under different heads, which are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

8. Heard learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

9. It is the contention of the appellant that in the accident, the appellant suffered Grade IIIB compound fracture of right femur in the right side of the distal end and degloving injury in the right left calf region. P.W.2 Doctor has assessed the percentage of disability suffered by the appellant as 65%. The Tribunal reduced the same to 30% on the ground that the Doctor has not assessed the disability to whole body and applied



percentage method to award compensation. Considering the nature of injuries and period of treatment, the appellant is entitled to compensation for 65% disability. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.1,90,000/- (65% x Rs.3,000/-). Due to the injuries sustained in the accident, the appellant took treatment as in-patient in Miot Hospital, Chennai, from 24.11.2013 to 13.12.2013. The Tribunal has awarded meagre sum of Rs.5,000/- each towards extra nourishment, attendant charges, future medical expenses and loss of amenities. Considering the nature of injuries and the period of treatment, the amounts awarded by the Tribunal towards extra nourishment, attendant charges, future medical expenses and loss of amenities are enhanced to Rs.20,000/-, Rs.20,000/-, Rs.10,000/- and Rs.25,000/- respectively.

9(a) According to the appellant, at the time of accident, he was working as Management Trainee in Consul Consultancy Private Limited and was earning a sum of Rs.30,000/- per month. He has marked the copy of appointment order as Ex.P6. The Tribunal rejected Ex.P6, on the ground that the same is only a xerox copy. The Tribunal fixed a meagre sum of Rs.6,500/- per month as notional income of the appellant. The accident is of the year 2013. In the absence of any material evidence to prove the avocation and income of the appellant, a sum of Rs.10,000/- per month is fixed as the notional income of the appellant. Due to the injuries, the appellant would not have worked atleast for a period of six months. Hence, the amounts awarded by the Tribunal towards loss of income is modified to Rs.60,000/- (Rs.10,000/- x 6 months). 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.	Disability	90,000/-	1,95,000/-	Enhanced
2.	Pain and suffering	50,000/-	50,000/-	Confirmed
3.	Extra nourishment	5,000/-	20,000/-	Enhanced
4.	Attendant charges	5,000/-	20,000/-	Enhanced
5.	Transport to Hospital	5,000/-	5,000/-	Confirmed
6.	Damages to clothes	1,000/-	1,000/-	Confirmed



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7.	Loss of amenities	5,000/-	25,000/-	Enhanced
8.	Future medical expenses	5,000/-	10,000/-	Enhanced
9.	Medical expenses	11,540/-	11,540/-	Confirmed
10.	loss of income	13,000/-	60,000/-	Enhanced
	Total	1,90,540/- rounded off to 1,90,600/-	3,97,540/- rounded off to 3,97,600/-	Enhanced by Rs.2,07,000/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,90,600/- is enhanced to Rs.3,97,600/- along with interest and costs. The 2nd respondent Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 7207 of 2013. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.2,07,000/-. No costs.

Sd/-
Deputy Registrar(Lok Adalat)

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Sub Assistant Registrar

gsa

To

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

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



+1cc to Mr.R. Nalliyappan, Advocate SR.No.7063

+1cc to Mr.S. Vadivel, Advocate SR.No.7288

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C.M.A. No. 1001 of 2016

VSN II (CO)
GMY (22/09/2021)