

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1854 of 2013

K.Rajan .. Appellant/Claimant
Vs.

1.A.Mani

(R1 was set exparte in Trial Court)

2.Bajaj Allianz General Insurance Company Limited,
No.12, Ab Tharamani, 100 Feet Road,
Velachery,
Chennai - 600 042. .. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.09.2012 made in M.C.O.P.No.912 of 2009 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Court, Poonamallee.

For Appellant : Ms.Y.Jayanthi Bhaskar
for Mr.J.Mahalingam

For R2 : Mr.J.Michael Visuvasam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 18.09.2012 made in M.C.O.P.No.912 of 2009 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Court, Poonamallee.

2.The appellant is the claimant in M.C.O.P.No.912 of 2009 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Court, Poonamallee. He filed the above said claim petition, claiming a sum of Rs.15,48,700/- as compensation for the injuries sustained by him in the accident that took place on 30.09.2008.

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 van belonging to the first respondent and directed the 2nd respondent-Insurance Company, being the insurer of the van to pay a sum of Rs.1,32,000/- as compensation to the appellant.

4.Not being satisfied with the amounts 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 in the accident the appellant sustained grievous multiple injuries and suffered 35% disability. The appellant was working as Chief Cook in Hotel City Tower, Kelambakkam and was earning a sum of Rs.300/- per day. Immediately after the accident, he has taken treatment at Chettinad Hospital and Research Institute on 30.09.2008 and thereafter shifted to Jubilee Mission Medical College Hospital, Thrissur and has taken treatment as in-patient from 02.10.2008 to 09.10.2008. He further continued his treatment as out-patient for one year and again he was admitted in the same hospital and has taken treatment as in-patient from 04.08.2009 to 06.08.2009. To prove the nature of injuries, the appellant examined himself as P.W.1 and examined P.W.2/Doctor. To prove the avocation and income, the appellant examined P.W.3 and filed documents as Exs.P9 to P11 and proved the avocation and income. The Tribunal erroneously fixed a meagre sum of Rs.5,000/- per month as notional income of the appellant. Due to the injuries sustained by him in the accident, the appellant could not continue his work as he was doing earlier. The Tribunal ought to have adopted multiplier method and awarded compensation for future loss of earning power. During the treatment period, the appellant lost his income for two years. The Tribunal has not awarded any amount towards loss of income, future loss of earning capacity, attendant charges and loss of amenities. The compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, Mr.J.Michael Visuvasam, learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant has not proved that he lost his earning capacity and the appellant suffered only minor injuries. The Tribunal considering the evidence of P.W.2/Doctor, fixed disability of the appellant at 35% and awarded compensation by adopting percentage method. The Tribunal failed to take into consideration the credibility of the evidence of both oral and documentary and accepted the evidence and awarded excessive amounts as compensation to the appellant. 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 the entire materials on record.

8. From the materials available on record, it is seen that it is the contention of the appellant that he was working as Chief Cook in Hotel City Tower, Kelambakkam and was earning a sum of Rs.300/- per day. He has examined one M.Baskar as P.W.3, who is an employee of the said hotel and filed Exs.P9 to P11 to prove his avocation and income. The accident occurred in the year 2008. The Tribunal did not accept the salary certificate produced by the appellant, fixed monthly income of the appellant at Rs.5,000/- and awarded a sum of Rs.5,000/- towards loss of earning for one month. The monthly income fixed by the Tribunal is meagre. Considering the evidence of appellant as P.W.1 and evidence of P.W.3 and Exs.P10 & P11, a sum of Rs.6,500/- is fixed as monthly income of the appellant. The appellant has not let in any evidence to show that he suffered functional disability and lost his earning capacity. Hence, he is not entitled to compensation by adopting multiplier method. Due to the injuries and disability suffered by the appellant, he would not have worked atleast for a period of six months. Thus, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.39,000/- (Rs.6,500/- X 6 months) at the rate of Rs.6,500/- per month for six months.

9. The appellant has taken treatment in the hospital as in-patient for two spells from 02.10.2008 to 09.10.2008 and 04.08.2009 to 06.08.2009 and has produced Exs.P3 and P4/discharge summaries to prove the same. But the Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the nature of injuries, disability and period of treatment taken by the appellant, the appellant is entitled to a sum of Rs.7,500/- towards attendant charges and Rs.15,000/- towards loss of amenities. The amounts awarded by the Tribunal towards extra nourishment and damage to clothes are meagre and the same are enhanced to Rs.5,000/- and Rs.1,000/- respectively. The amounts awarded by the Tribunal towards disability, pain and sufferings, transportation and medical expenses 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	70,000/-	70,000/-	Confirmed
2.	Pain and sufferings	25,000/-	25,000/-	Confirmed
3.	Loss of income	5,000/-	39,000/-	Enhanced
4.	Extra nourishment	2,000/-	5,000/-	Enhanced
5.	Transportation	5,000/-	5,000/-	Confirmed
6.	Medical expenses	24,500/-	24,500/-	Confirmed
7.	Damages to clothes	500/-	1,000/-	Enhanced
8.	Loss of amenities	-	15,000/-	Granted
9.	Attendant charges	-	7,500/-	Granted
	Total	Rs.1,32,000/-	Rs.1,92,000/-	enhanced by Rs.60,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,32,000/- is hereby enhanced to Rs.1,92,000/- 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 the necessary Court fee, if any on the enhanced amount of compensation. The 2nd respondent-Insurance Company is directed to deposit the enhanced 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.912 of 2009 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Court, Poonamallee. 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 making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

krk

To

1.The III Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Poonamallee.

Copy to:

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

C.M.A.No.1854 of 2013

A.SK(30.04.2021)