

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2103 of 2012

Anandaraj

.. Appellant/Petitioner

Vs.

1.R.Shanmugavel

2.United India Insurance Company Limited,
AR Complex,
II Floor,
No.1090, Poonamallee High Road,
Chennai - 600 084.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.03.2011 made in M.C.O.P.No.4122 of 2008 on the file of the Motor Accidents Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant : Ms.A.Subadra
for Ms.M.Malar

For R2 : Mr.D.Bhaskaran

For R1 : Exparte

J U D G M E N T
सत्यमेव जयते

The matter is heard through -"Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 24.03.2011 made in M.C.O.P.No.4122 of 2008 on the file of the Motor Accidents Claims Tribunal, VI Small Causes Court, Chennai.

3.The appellant is the claimant in M.C.O.P.No.4122 of 2008 on the file of the Motor Accidents Claims Tribunal, VI Small Causes Court, Chennai. He filed the said claim petition, claiming a sum of Rs.12,00,000/- as compensation for the injuries sustained by him in the accident that took place on

08.06.2008.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the lorry to pay a sum of Rs.10,15,300/- 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 suffered fracture in right leg, hip, forehead, head injury and multiple injuries all over the body. To prove the nature of injuries and disability suffered by him, the appellant examined P.W.2 to P.W.4/Doctors. P.W.2 and P.W.4/Doctors examined the appellant and certified that appellant suffered 20% and 60% disability respectively. The Tribunal without giving any valid reason, reduced the percentage of disability to 70% and awarded compensation only for 70% disability. Due to the injuries sustained by him in the accident, the appellant sustained 100% loss of earning capacity and the Tribunal ought to have awarded compensation for 100% loss of earning capacity. The appellant was a Loadman and was earning a sum of Rs.6,000/- per month. But, the Tribunal fixed a meagre sum of Rs.4,500/- per month as notional income of the appellant. The appellant was aged 21 years at the time of accident and the Tribunal erroneously adopted multiplier '17' instead of '18'. The amounts awarded by the Tribunal towards pain and sufferings, damages to cloth, transportation and extra nourishment are meagre. The Tribunal has not awarded any amount towards attendant charges, future medical expenses, mental agony and loss of amenities. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal rightly reduced the percentage of disability from 20% to 15% and from 60% to 55% assessed by P.W.2 and P.W.4/Doctors respectively on the ground that P.W.2 and P.W.4/Doctors have not treated the appellant and they have not produced any X-Ray report. Hence, appellant is not entitled to compensation for 80% of disability. The appellant has not filed any material evidence with regard to his avocation and income. In the absence of any material evidence with regard to avocation and income, a sum of Rs.4,500/- per month fixed by the Tribunal as notional income of the appellant is not meagre. The amounts awarded by the Tribunal

under different heads are not meagre and the appellant is not entitled to any amount towards attendant charges, future medical expenses, mental agony and loss of amenities. 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.

9. From the materials available on record, it is seen that it is the contention of the appellant that in the accident the appellant suffered fracture in right leg, hip, forehead, head injury and multiple injuries all over the body. To prove the nature of injuries and disability suffered by him, the appellant examined himself as P.W.1 and P.W.2 to P.W.4/Doctors. P.W.2 and P.W.4/Doctors examined the appellant and certified that appellant suffered 20% and 60% disability respectively. The Tribunal reduced the percentage of disability from 20% to 15% and from 60% to 55% assessed by P.W.2 and P.W.4/Doctors respectively on the ground that P.W.2 and P.W.4/Doctors have not treated the appellant and they have not produced any X-Ray report. The reason given by the Tribunal for reducing the percentage of disability is proper and the appellant is entitled to compensation only for 70% of disability. It is the contention of the appellant that he was a Loadman and was earning a sum of Rs.6,000/- per month. He has failed to prove the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal has fixed a sum of Rs.4,500/- per month as notional income of the appellant. The accident occurred in the year 2008 and the monthly income fixed by the Tribunal is meagre. A sum of Rs.6,000/- per month is fixed as notional income of the appellant. The appellant was aged 21 years at the time of accident and the Tribunal has erroneously adopted multiplier '17'. The correct multiplier applicable as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others vs. Delhi Transport Corporation & another] is '18'. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.9,07,200/- (Rs.6,000/- X 12 X 18 X 70/100). Due to the injuries sustained by him in the accident, the appellant would not have worked atleast for a period of eight months. Thus, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.48,000/- (Rs.6,000/- X 8 months).

10. From the award passed by the Tribunal, it is seen that the appellant has taken treatment as in-patient for 13 days from 09.06.2008 to 21.06.2008 at Soundarapandian Bone and Joint Hospital and Research Institute Private Limited, Chennai. 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 and disability suffered, he is entitled to a sum of Rs.10,000/- each towards attendant charges and loss of amenities respectively. The appellant has not produced any medical records to show that he requires future medical treatment. Hence, the appellant is not entitled to any amount towards future medical expenses. The amounts awarded by the Tribunal towards transportation, extra nourishment, damages to clothes, medical expenses and pain and sufferings are just and reasonable and hence, the same are hereby confirmed.

11.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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	6,42,600/-	9,07,200/-	Enhanced
2.	Pain and sufferings	50,000/-	50,000/-	Confirmed
3.	Loss of income	36,000/-	48,000/-	Enhanced
4.	Extra nourishment	10,000/-	10,000/-	Confirmed
5.	Transportation	10,000/-	10,000/-	Confirmed
6.	Medical expenses	2,65,688/-	2,65,688/-	Confirmed
7.	Damages to clothes	1,000/-	1,000/-	Confirmed
8.	Attendant charges	-	10,000/-	Granted
9.	Loss of amenities	-	10,000/-	Granted
	Total	Rs.10,15,288/- rounded off to Rs.10,15,300/-	Rs.13,11,888/- rounded off to Rs.13,11,900/-	enhanced by Rs.2,96,600/-

12.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.10,15,300/- is hereby enhanced to Rs.13,11,900/- 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 on the enhanced amount of compensation now determined by this Court. 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.4122 of 2008 on the file of the Motor Accidents Claims Tribunal, VI Small Causes Court, 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 making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

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

+1cc to Mrs.M.Malar, Advocate SR.35943

C.M.A.No.2103 of 2012

EV(CO)
CB(15/03/2021)

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