

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.326 of 2020

R.Chandra Sekaran

.. Appellant

Vs.

1.Manoj Kumar

2.United India Insurance Co. Ltd.,
Motor Third Party Claim Office,
No.134, Greams Road,
Chennai - 600 006.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.03.2019 made in M.C.O.P.No.7000 of 2015 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant
For R2

: Mr.K.Varadha Kamaraj
: Mr.J.Michael Visuvasam

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 08.03.2019 made in M.C.O.P.No.7000 of 2015 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.7000 of 2015 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.05.2015.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle

belonging to the 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.4,42,000/- as compensation to the appellant.

4. Not being satisfied with the quantum of compensation 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 the appellant was working as a Fitter in Indian Oil Company, Harbour, Chennai and was earning a sum of Rs.10,000/- per month. The appellant sustained loss of vision of right eye, laceration, head injuries and multiple injuries all over the body. Due to injuries sustained by the appellant, he could not continue his work as he was doing earlier and lost his earning capacity. The Tribunal ought to have held that the appellant suffered 100% loss of earning capacity and fixed as 100% loss of earning capacity instead of 50%. The Tribunal has not awarded any compensation towards disability. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not produced any document to prove his avocation and income. In the absence of any material evidence, with regard to avocation and income of the appellant, the Tribunal has rightly fixed a sum of Rs.7,000/- as monthly income of the appellant which is not meagre. The Tribunal after considering all the materials available on record in proper perspective, has awarded compensation, which are not meagre 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 all the materials available on record.

8. It is the contention of the appellant that he sustained loss of vision of right eye, laceration, head injuries and multiple injuries all over the body. The appellant has taken treatment as in-patient in Stanley Medical College Hospital, Chennai from 10.05.2013 to 14.05.2013 and subsequently he has taken treatment as outpatient in M.N. Eye Hospital Pvt. Ltd. To prove the said contention, the appellant examined himself as PW1 and produced Ex.P1/discharge summary, Ex.P2/OP chits and Ex.P3/case summary. The appellant did not examine any Doctor to prove that he has suffered fracture and injuries. The appellant was referred to Medical Board. The Medical Board examined the appellant and assessed 30% disability. The disability

certificate issued by the Medical Board was marked as Ex.C1. Though, Medical Board assessed the disability of the appellant as 30%, the Tribunal fixed 50% as functional disability. Hence, he is not entitled for any enhancement to prove the income. The appellant was aged 65 years at the time of accident and was earning a sum of Rs.10,000/- per month by working as Fitter in Indian Oil Company, Harbour, Chennai. The appellant failed to prove the said contention. In the absence of any material evidence, with regard to avocation and income of the appellant, the Tribunal fixed a sum of Rs.7,000/- as monthly income of the appellant and the same is meagre. The accident is of the year 2015 and a sum of Rs.8,000/- is fixed as monthly income of the appellant and by applying multiplier '7', the amount awarded by the Tribunal towards loss of earning is enhanced to Rs.3,36,000/- (Rs.8,000/- x 12 x 7 x 50/100). The amounts awarded by the Tribunal under all other heads are just and reasonable and hence the same are hereby 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.	Loss of earning due to functional disability	2,94,000	3,36,000	Enhanced
2.	Pain and sufferings	40,000	40,000	Confirmed
3.	Extra nourishment	20,000	20,000	Confirmed
4.	Transport to hospital	10,000	10,000	Confirmed
5.	Damages to clothes	1,000	1,000	Confirmed
6.	Attendant charges	2,000	2,000	Confirmed
7.	Medical expenses	3,543.50	3,543.50	Confirmed
8.	Future medical expenses	10,000	10,000	Confirmed

9.	Loss of income	21,000	21,000	Confirmed
10.	Loss of amenities	40,000	40,000	Confirmed
	Total	Rs.4,41,543.50/-is rounded off to Rs.4,42,000/-	Rs.4,83,543.50/- is rounded off to Rs.4,84,000/-	Enhanced by Rs.42,000/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,42,000/- is hereby enhanced by Rs.4,84,000/- 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 necessary Court fee, if any, on the enhanced 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. On such deposit, appellant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

mtl

To

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

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

+1cc to Mr.K.Varadha Kamaraj , Advocate SR.No. 10092

+1cc to Mr.J.Michael Visuvasam , Advocate SR.No. 10094

C.M.A.No.326 of 2020

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A.SK(28.12.2020)