

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.642 of 2020

V.Rajendran

... Appellant/Claimant

Vs.

1.J.Solomon

2.ICICI Lombard General Insurance Company Limited,

Arihant Plaza, 1<sup>st</sup> Floor,

No.84 & 85, Wall Tax Road,

Chennai - 600 003.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.04.2018 made in M.C.O.P.No.5504 of 2011 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Ms.R.Sreevidhya

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 04.04.2018 made in M.C.O.P.No.5504 of 2011 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.5504 of 2011 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.11.2011.

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 bearing Registration No.TN 02 AS 5949 belonging to the 1<sup>st</sup> respondent and directed the 2<sup>nd</sup> respondent-Insurance Company, being the insurer of the motorcycle to pay a sum of Rs.1,91,200/- 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 Grade 1 compound fracture of both bone left leg, IL nail tibia done and P.W.2/Doctor examined the appellant and certified that appellant suffered 45% disability and issued Ex.P5/disability certificate to that effect. The Tribunal without giving any valid reason, reduced the percentage of disability to 30% and awarded compensation. The Tribunal ought to have awarded compensation for 45% disability. The appellant was aged 24 years and was running a Biriyani Stall and was earning a sum of Rs.500/- per day and the monthly income fixed by the Tribunal at Rs.9,000/- is meagre. The amounts awarded by the Tribunal towards pain and sufferings, transportation, extra nourishment, attendant charges, loss of income and loss of amenities are meagre. The Tribunal has not awarded any amount towards future medical expenses. 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 2<sup>nd</sup> respondent-Insurance Company contended that the Tribunal reduced the percentage of disability from 45% to 30% on the ground that P.W.2/Doctor has not given treatment to the appellant and also P.W.2/Doctor has not assessed the disability for the whole body. Therefore, the appellant is not entitled to compensation for 45% disability. The appellant has not produced any material evidence to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, a sum of Rs.9,000/- per month fixed by the Tribunal as notional income of the appellant is excessive. The amounts awarded by the Tribunal under different heads are not meagre. 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 2<sup>nd</sup> respondent- Insurance Company and perused the entire materials on record.

8. From the award passed by the Tribunal, it is seen that in the accident the appellant sustained Grade 1 compound fracture of both bone left leg, IL nail tibia done. To prove the nature of injuries and disability suffered by him, the appellant examined P.W.2/Doctor. P.W.2/Doctor examined the appellant and certified that appellant suffered 45% disability and issued Ex.P5/disability certificate to that effect. The 2<sup>nd</sup> respondent- Insurance Company did not let in any contra evidence to disprove the contention of P.W.2/Doctor and Ex.P5/disability certificate. The Tribunal reduced the percentage of disability to 30% on the ground that P.W.2/Doctor has not given treatment to the appellant and he has not assessed the disability for the whole body and also as per the contention of P.W.2/Doctor that percentage of disability may vary up to 5% from one Doctor to another Doctor. The reason given by the Tribunal for reducing the percentage of disability is not correct. The appellant is entitled to compensation for 45% disability. The accident occurred in the year 2011 and the Tribunal has awarded a sum of Rs.3,000/- per percentage of disability, which is proper. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,35,000/- [Rs.3,000/- X 45% of disability].

9. It is the contention of the appellant that he was aged 24 years and was running a Biriyani Stall and earning a sum of Rs.500/- per day at the time of accident. The appellant failed to prove the said contention. In the absence of any evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.9,000/- per month as notional income of the appellant and awarded compensation towards loss of income for three months. The accident occurred in the year 2011 and the monthly income fixed by the Tribunal is meagre. Considering the year of accident, age and nature of work done by the appellant, a sum of Rs.12,000/- per month is fixed as notional income of the appellant. Due to the injuries and disability sustained by him, he would not have attended his work at least for a period of five months. Therefore, the amount awarded by the Tribunal towards loss of income is modified to Rs.60,000/- [Rs.12,000/- X 5 months]. From the award passed by the Tribunal, it is seen that the appellant has taken treatment in the Kilpauk Government General Hospital as in-patient for 24 days from 29.11.2011 to 22.12.2011 and the amounts awarded by the Tribunal towards attendant charges, transportation, extra nourishment, damages to clothes and loss of amenities are meagre and the same are hereby

enhanced to Rs.25,000/-, Rs.10,000/-, Rs.25,000/-, Rs.2,000/- and Rs.20,000/- respectively. The appellant has not proved that he requires amount for future treatment and hence, he is not entitled to any amount towards future medical expenses. The amounts awarded by the Tribunal towards pain and sufferings and medical expenses are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

| Sl. No | Description         | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Amount confirmed, enhanced or granted |
|--------|---------------------|---------------------------------|-----------------------------------|---------------------------------------|
| 1.     | Disability          | 90,000/-                        | 1,35,000/-                        | Enhanced                              |
| 2.     | Pain and sufferings | 40,000/-                        | 40,000/-                          | Confirmed                             |
| 3.     | Attendant charges   | 7,200/-                         | 25,000/-                          | Enhanced                              |
| 4.     | Extra nourishment   | 10,000/-                        | 25,000/-                          | Enhanced                              |
| 5.     | Transportation      | 5,000/-                         | 10,000/-                          | Enhanced                              |
| 6.     | Medical expenses    | 1,000/-                         | 1,000/-                           | Confirmed                             |
| 7.     | Loss of income      | 27,000/-                        | 60,000/-                          | Enhanced                              |
| 8.     | Loss of amenities   | 10,000/-                        | 20,000/-                          | Enhanced                              |
| 9.     | Damages to clothes  | 1,000/-                         | 2,000/-                           | Enhanced                              |
|        | Total               | Rs.1,91,200/-                   | Rs.3,18,000/-                     | Enhanced by Rs.1,26,800/-             |

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,91,200/- is hereby enhanced to Rs.3,18,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2<sup>nd</sup> 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.5504 of 2011 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already

withdrawn by making necessary applications before the Tribunal. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court. It is made clear that the appellant is not entitled to any interest for Rs.1,26,800/- the amount now enhanced by this Court, as per the order of this Court dated 13.02.2020 made in C.M.P.No.1178 of 2020 in C.M.A.No.SR.6301 of 2020. No costs.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

krk  
To

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

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

+1cc to Mr.K.Varadhakamaraj, Advocate Sr.15263  
+1cc to Mr.R.Sree Vidhya, Advocate Sr.15777

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C.M.A.No.642 of 2020

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