

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2297 of 2015

Subramani ... Appellant/Petitioner

Vs.

1.K. Ram Prasad

2.The ICICI Lombard General Insurance Co. Ltd.,
No. 140, Nungambakkam High Road,
Chennai 600 080. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 09.07.2015, made in M.C.O.P. No. 363 of 2014, on the file of the V Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. C. Richard Sureshkumar

For Respondents : Ms. R. Sree Vidhya (for R2)
: R1-unclaimed

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 09.07.2015, made in M.C.O.P. No. 363 of 2014, on the file of the V Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-claimant filed M.C.O.P. No. 363 of 2014, on the file of the V Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 04.01.2014.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 1st respondent, rider-cum-owner of the Motorcycle and directed the 2nd respondent, as insurer of the Motorcycle to pay a sum of Rs.1,80,000/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 09.07.2015, made in M.C.O.P. No. 363 of 2014, the appellant has come out with the present appeal.

5. Learned counsel appearing for the appellant contended that in the accident, the appellant sustained grievous injuries all over the body and took treatment as in-patient in Rajiv Gandhi Government General Hospital, Chennai from 04.01.2014 to 14.01.2014. P.W.2 Doctor has assessed the percentage of disability suffered by the appellant as 40%. Considering the nature of injuries, the Tribunal ought to have adopted multiplier method in awarding compensation towards disability. In any event, the amounts awarded by the Tribunal towards disability, loss of amenities, attendant charges, extra nourishment are meagre and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that P.W.2-Doctor who assessed the disability of the appellant is a stock witness and Tribunal rightly holding that the disability assessed is on the higher side, reduced the same from 40% to 30% and awarded compensation towards disability, which is proper. In any event, the total compensation awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

8. It is the contention of the appellant that in the accident, he has suffered grievous injuries and has taken treatment as in-patient in Rajiv Gandhi Government General Hospital, Chennai from 04.01.2014 to 14.01.2014. P.W.2 Doctor has assessed the percentage of disability suffered by the appellant as 40%. The respondents did not let in any evidence to disprove the evidence of P.W.2- Doctor and disability certificate marked as Ex.P9. The Tribunal reduced the percentage of disability to 30% on the ground that the disability assessed by the Doctor is on the higher side. The reason given by the Tribunal for reducing the percentage of disability is not valid. The appellant is entitled to compensation towards disability for 40% disability, as there is no contra evidence. This Court by judgment dated 09.01.2020 made in C.M.A. No. 4870 of 2020 in the case of M/s. IFFCO TOKIO General Insurance Company Limited vs. Venkatesh and another), fixed a sum of Rs.4,000/- per

percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2014. In view of the same, a sum of Rs.4,000/- is awarded per percentage of disability. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.1,60,000/- (Rs.4,000/- x 40%). Considering the period of treatment taken by the appellant, the amount awarded by the Tribunal towards attendant charges is enhanced to Rs.15,000/-.

8(a) The appellant has contended that at the time of accident, he was working as Car Driver and earning a sum of Rs.15,000/- per month. He has failed to substantiate the same. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.10,000/- per month as the notional income. Due to the injuries sustained in the accident, he would not have worked atleast for a period of three months. Hence, the amount awarded by the Tribunal towards loss of earning is enhanced to Rs.30,000/- (Rs.10,000/- x 3 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/-	1,60,000/-	Enhanced
2.	Medical expenses	7,200/-	7,200/-	Confirmed
3.	Transportation , nourishing food & miscellaneous expenditure	25,000/-	25,000/-	Confirmed
4.	Attendant charges	2,800/-	15,000/-	Enhanced
5.	Loss of earning	20,000/-	30,000/-	Enhanced
6.	Pain and suffering	25,000/-	25,000/-	Confirmed
7.	Loss of amenities	10,000/-	10,000/-	Confirmed

Total	1,80,000/-	2,72,200/-	Enhanced by Rs.92,200/-
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9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,80,000/- is enhanced to Rs.2,72,200/- 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. 363 of 2014. 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.92,200/-. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

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

+1cc to Mr.C.Richard Sureshkumar, Advocate Sr.14594
+1cc to Ms.R.Sree Vidhya, Advocate Sr.15327

C.M.A. No. 2297 of 2015

rsk[col]
srg 29/07/2020