

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2322 of 2012

A. Prabhu

.. Appellant/Petitioner

Vs.

1.K. Balamurugan -Exparte

2.National Insurance Co. Ltd.,

No. 75/1, P.S. Sivasamy Salai,

Arul Plaza, Mylapore,

Chennai 600 004.

.. Respondents/Respondents

(R1 was set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.12.2011, made in M.C.O.P. No.2780 of 2010, on the file of the VI Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr. A.Prakash
for M/s. C and K Law Firm

For Respondents 2 : Mr. S.Vadivel (For R2)
R1 : Exparte

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of the compensation granted by the Tribunal in award dated 12.12.2011, made in M.C.O.P. No.2780 of 2010, on the file of the VI Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

2.The appellant-claimant filed M.C.O.P. No.2780 of 2010, on the file of the VI Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.6,52,000/- as compensation for the injuries sustained by him in the accident that took place on 07.07.2010.

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 1st respondent and directed the 2nd respondent who is the insurer of the offending vehicle to pay a sum of Rs.2,51,327/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 12.12.2011, made in M.C.O.P. No.2780 of 2010, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant suffered fracture at right hand, closed distal ulnar fracture at right forearm besides other severe injuries. He has taken treatment as in-patient in Sri Ramachandra Hospital, Chennai, underwent surgeries and is taking treatment as out-patient till now and produced Exs.P1 to P3 to prove the same. P.W.2 Doctor assessed that the appellant suffered 50% disability and issued disability certificate. The Tribunal without considering the same, reduced the percentage of disability to 40%. The amounts awarded by the Tribunal towards pain and suffering, extra nourishment, transportation, attendant charges are meagre. Due to the accident, the appellant could not do the work as he was doing earlier. The Tribunal ought to have adopted multiplier method and awarded compensation towards disability. The Tribunal failed to award any amount towards future medical expenses and loss of earning power. In any event, the total compensation granted by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant has not proved that due to the injuries sustained by him in the accident, he lost his earning power and suffered functional disability. Hence, the appellant is not entitled to compensation by adopting multiplier method. The Tribunal considering the injuries suffered by the appellant, evidence of P.W.2 - Doctor and documents filed, rightly awarded compensation towards disability, which is not meagre. In the absence of any material evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the appellant and awarded compensation towards loss of income for a period of two months and the same is not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

8. It is the contention of the appellant that in the accident, he suffered fracture at right hand, closed distal ulnar fracture at right forearm, besides other severe injuries. He examined himself as P.W.1 and deposed to that effect. The appellant also examined P.W.2 - Doctor who deposed the nature of injuries, treatment taken and disability suffered by the appellant. P.W.2- Doctor certified that the appellant suffered 50% disability and issued disability certificate, marked as Ex.P6. The appellant has not proved that he suffered functional disability and he lost his earning capacity. Hence, the appellant is not entitled to compensation towards disability by adopting multiplier method. The Tribunal considering the evidence of P.W.2-Doctor and disability certificate, rightly reduced the percentage of disability to 40% on the ground that the assessment of P.W.2-Doctor is on the higher side and awarded a sum of Rs.80,000/- towards disability at the rate of Rs.2,000/- per percentage and the same is not meagre. From the materials on record, it is seen that the appellant has taken treatment as in-patient at SRMC Hospital from 07.07.2010 to 13.07.2010 and again at Parvathy Hospital, Guindy for a period of 5 days and underwent surgeries. To prove the same, the appellant has marked Exs.P2 and P3 - discharge summaries. Considering the nature of injuries and treatment taken by the appellant, the amounts awarded by the Tribunal towards attendant charges and extra nourishment are enhanced to Rs.10,000/- each.

9. From the materials on record, it is seen that it is the contention of the appellant that he was working as a Collection Executive at M/s. S.S.S. Enterprises, Chennai and was earning a sum of Rs.10,000/- per month. The appellant has failed to substantiate the same. In the absence of any material evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.4,500/- per month as notional income and awarded a sum of Rs.9,000/- as compensation for loss of income for two months. The accident is of the year 2010. The notional monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.7,500/- is fixed as notional monthly income. Due to the injuries and disability, the appellant would not have worked at least for a period of four months. Hence, the appellant is entitled to a sum of Rs.30,000/- towards loss of income for a period of four months. The amounts awarded by the Tribunal under 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 income	9,000/-	30,000/-	Enhanced
2.	Transportation	7,000/-	7,000/-	Confirmed
3.	Pain and suffering	30,000/-	30,000/-	Confirmed
4.	Damages to clothes	1,000/-	1,000/-	Confirmed
5.	Extra nourishment	5,000/-	10,000/-	Enhanced
6.	Attendant charges	1,000/-	10,000/-	Enhanced
7.	Medical expenses	1,18,327/-	1,18,327/-	Confirmed
8.	Disability	80,000/-	80,000/-	Confirmed
	Total	2,51,327/-	2,86,327/-	Enhanced by Rs.35,000/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.2,51,327/- is enhanced to Rs.2,86,327/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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.2780 of 2010. On such deposit, the appellant is permitted to withdraw the enhanced award amount, now determined by this Court, 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.35,000/-. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

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

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

+1 cc to M/s.S.Vadivel, Advocate Sr.No. 34477

C.M.A.No.2322 of 2012

CNR (CO)
RMP (06/05/2021)