

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.2163 OF 2013

C.Narayanan

.. Appellant/Petitioner

Vs.

1. M/s.Shakar & Co. (Madras),
No.8, 34th Street, Ashok Nagar, Chennai - 83.

2. The New India Assurance Co.Ltd.,
No.45, Moore Street, Chennai - 1. ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.01.2007 made in M.C.O.P.No.1745 of 2000 on the file of the Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai.

For Appellant	:	Mr.K.R.Ponnusamy
		for Anand and Suryas
For R2	:	Mrs.N.K.Kanthimathi
		for Mr.N.Anand
		M/s.Anandagomathy Sivakumar
		for R1-NA

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 10.01.2007 made in M.C.O.P.No.1745 of 2000 on the file of the Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai.

2.The appellant is the claimant in M.C.O.P.No.1745 of 2000 on the file of the Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai. He filed the above claim petition, claiming a sum of Rs.1,25,000/- as compensation for the injuries sustained by him in the accident that took place on 31.12.1999.

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

belonging to the 1st respondent herein and directed the 2nd respondent-Insurance Company, being insurer of the motorcycle to pay a sum of Rs.63,300/- 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 for enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the appellant sustained fracture of left femur and multiple injuries all over the body. The appellant was admitted in the Government Royapettah Hospital, Chennai and after first aid he was referred to Government General Hospital, Chennai and taken treatment from 31.12.1999 to 09.03.2000, totally 69 days as inpatient and bone grafting was done. The appellant continued his treatment for a long time as outpatient. However, the Tribunal has awarded only a sum of Rs.6,000/- towards loss of income for the period of three months at the rate of Rs.2,000/-. Due to injuries suffered by the appellant, he could not continue his work as he was doing earlier. The Tribunal ought to have adopted multiplier method for awarding compensation for the disability sustained by the appellant. He also contended that the Tribunal awarded a meagre amounts towards pain and suffering, Transportation, extra nourishment and damage to clothes and the Tribunal has not awarded any amount towards loss of amenities.

6. Per contra, learned counsel appearing for the second respondent/Insurance Company contended that the appellant has not produced any material evidence to prove his avocation and income and in the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.2,000/- per month as notional income of the appellant and granted Rs.6,000/- for loss of income, which is excessive. Therefore, the appellant is not entitled to any amount towards pain and suffering, Transportation, extra nourishment and damage to clothes. The amounts awarded by the Tribunal under different heads 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 the 2nd respondent/Insurance Company and perused the materials available on record.

8. It is the contention of the appellant that at the time of accident, he was working as Watchman and was earning a sum of Rs.2,000/- per month. There is no contra evidence let in by the respondents. The Tribunal has accepted the contention of the appellant and fixed Rs.2,000/- per month as income of the appellant and granted Rs.6,000/- towards loss of income for three months. Due to the injuries and treatment taken, the

appellant would not have attended his work atleast for a period of eight months. Hence, a sum of Rs.16,000/- (Rs.2,000/- X 8 months) is granted towards loss of income for eight months. According to the appellant, he sustained 45% disability and produced Ex.P5/disability certificate and claimed that due to the injuries he could not continue his work and prayed to apply the multiplier method to award compensation. P.W.2/doctor who gave disability certificate has admitted that he has not given any treatment to the appellant and he has not followed any scientific test for the assessment of disability. The appellant has not proved that he has suffered loss of earning power. In such circumstances, the Tribunal has rightly not adopted the multiplier method. There is no infirmity in the award of the Tribunal granting compensation for the disability by adopting percentage method. Thus, the compensation of Rs.45,000/- awarded by the Tribunal towards disability is confirmed.

9. Considering the nature of injuries and period of treatment taken by the appellant, the Tribunal has awarded a sum of Rs.1,500/-, Rs.1,500/-, Rs.300/- and Rs.8,000/- towards transportation, extra nourishment, damage to clothes and pain and suffering which are meagre. Hence, a sum of Rs.5,000/- towards transportation, Rs.10,000/- towards extra nourishment, Rs.500/- towards damage to clothes and Rs.15,000/- towards pain and suffering is awarded by this Court. 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.	Transportation	1,500/-	5,000/-	enhanced
2.	Extra nourishment	1,500/-	10,000/-	enhanced
3.	Damage to clothes	300/-	500/-	enhanced
4.	Medical expenses	1,000/-	1,000/-	confirmed
5.	Loss of income	6,000/-	16,000/-	enhanced
6.	Pain and suffering	8,000/-	15,000/-	Enhanced
7.	Permanent disability	45,000/-	45,000/-	confirmed
	Total	Rs.63,300/-	Rs.92,500/-	enhanced by Rs.29,200/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.63,300/- is hereby enhanced to Rs.92,500/- 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 together 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 order to the credit of M.C.O.P.No.1745 of 2000 on the file of the Motor Accident Claims Tribunal, Small Causes Court No.III, 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 filing separate petition before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gbi

To

1. The Judge,
Motor Accident Claims Tribunal,
Small Causes Court No.III, Chennai.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/S.Anand and Suryas, Advocate, S.R.No.20291

+1cc to Mr.N.Anand, Advocate, S.R.No.20097

C.M.A.No.2163 of 2013

RSK(CO)

CS/12/03/2021

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