

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2247 of 2013

Rajah Ramesh Kumar

.. Appellant/Claimant

Vs.

1. M/s.Om Sakthi Travels (P) Limited,
Old No.40 A, New No.23, Devi Nagar,
Thiruninravur, Thiruvallur District.

(R1 was set exparte in the Trial Court)

2. The New India Assurance Company Limited,
F46, 1st Main Road, Annanagar East,
Chennai - 600 102.

.. Respondents/Defendants

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.03.2012 made in M.C.O.P.No.2669 of 2007 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr.K.V.MuthuVisakan

For R2 : Mr.J.Chandran

For R1 : Exparte

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 26.03.2012 made in M.C.O.P.No.2669 of 2007 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

3.The appellant is the claimant in M.C.O.P.No.2669 of 2007 on the file of the Motor Accident Claims Tribunal, V Small

Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 23.01.2007.

4.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 bus belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the bus to pay a sum of Rs.15,08,500/- as compensation to the appellant.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellant contended that the appellant sustained head injury and multiple injuries all over the body. Due to the head injury he suffered Brain Haemorrhage and memory loss. The appellant examined P.W.3/Doctor who treated him in Apollo Hospital, where he has taken treatment for three months from 23.01.2007 to 23.04.2007 as in-patient and also examined P.W.4/Doctor, who clinically examined the appellant and issued disability certificate. Both the Doctors have deposed about the nature of injuries and disability suffered by the appellant. P.W.4/Doctor assessed that appellant suffered 75% disability. The Tribunal instead of granting compensation for loss of earning power for 100% earning capacity, granted only for 30% disability. The amounts awarded by the Tribunal towards loss of income, transportation, extra nourishment, damages to clothes, attendant charges and pain and sufferings are meagre. The appellant continued his treatment even after his discharge from the Hospital and spent money and require amount for future medical expenses. The Tribunal has not awarded any amount for future medical expenses and for loss of amenities and prayed for enhancement of compensation.

7.Per contra, Mr.J.Chandran, learned counsel appearing for the 2nd respondent-Insurance Company contended that P.W.3/Doctor is not the Doctor who treated the appellant. P.W.4/Doctor has certified that appellant suffered 75% disability without any basis and the percentage of disability assessed by P.W.4/Doctor is excessive. The Tribunal considering the evidence of P.W.3 & 4/Doctors, fixed loss of earning power as 30% and awarded compensation which is not meagre. The Tribunal after considering the nature of injuries, period of treatment taken has awarded compensation under different heads which are not meagre. The total compensation awarded by the Tribunal is excessive and appellant is not entitled for any enhancement and prayed for dismissal of the appeal.

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

9. From the materials available on record it is seen that it is the contention of the appellant that he is a Master Degree Holder with qualification of Software and Hardware Engineering. The appellant was employed as Assistant System Analyst in Cyber Net Software Systems Private Limited, Mylapore, Chennai and was earning a sum of Rs.24,000/- per month. To substantiate his avocation and income, the appellant examined one R.Yuvaraj as P.W.5, an official from the Company where the appellant worked and marked Exs.P10 to 17, 26 to 28. From Ex.P27/Salary Certificate it is seen that the appellant's salary was Rs.19,246/- per month. But as per Ex.P28/Bank Statement, the appellant was paid Rs.17,352/- every month. The Tribunal accepting Ex.P28/Bank Statement, fixed monthly income of the appellant at Rs.17,352/-.

10. It is the contention of the learned counsel appearing for the appellant that as per Ex.P27/Salary Certificate, the monthly salary of the appellant was Rs.19,246/-. After deduction, the employer deposited a sum of Rs.17,352/- per month and hence, the appellant is entitled to compensation based on the Salary Certificate. The Tribunal has not given any reason for rejecting Ex.P27/Salary Certificate. In view of the same, a sum of Rs.19,246/- is fixed as monthly income of the appellant. Due to the nature of injuries and disability suffered by him in the accident, the appellant would not have worked atleast for a period of three months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.57,738/- (Rs.19,246/- X 3 months).

11. It is the contention of the appellant that he has taken treatment as in-patient from 23.01.2007 to 23.04.2007 in Apollo Hospital for three months and produced Ex.P2/discharge summary. The appellant examined P.W.3/Doctor from Apollo Hospital who treated him. P.W.3/Doctor has deposed in detail about the nature of injuries suffered by the appellant and the treatment given to the appellant. In addition to P.W.3/Doctor, the appellant examined P.W.4/Doctor, who clinically examined the appellant, medical records of the appellant and certified that appellant suffered 75% disability. The Tribunal considering the evidence of P.W.3 & 4/Doctors and Exs.P20 to 25 and elaborately recording the nature of injuries and disability, concluded that appellant suffered Brain injury and he cannot continue his avocation as he was doing earlier and has suffered functional disability to act as Assistant System Analyst. Having held so, the Tribunal erroneously held that appellant can do other work and earn money, which does not require mental skill and fixed disability of the

appellant as 30% and awarded compensation for 30% of disability. The reason given by the Tribunal for fixing 30% disability is erroneous. Considering the evidence of P.W.3 & 4/Doctors and documents produced by the appellant and conclusion by the Tribunal that appellant cannot do the work as he was doing earlier and the evidence of P.W.5 that appellant was settled as full and final settlement, it will be just and equitable to fix 60% loss of earning power to the appellant and the appellant is entitled to compensation for 60% disability.

12.It is the contention of the learned counsel appearing for the 2nd respondent-Insurance Company that P.W.4/Doctor is not the Doctor who treated the appellant and the assessment of disability of the appellant is without any basis and is excessive. The 2nd respondent-Insurance Company has not examined any Doctor to disprove the evidence of P.W.4/Doctor and disability assessed by him. The appellant examined P.W.3/Doctor who treated him in Apollo Hospital and filed documents to show that he suffered functional disability and lost his earning capacity. The appellant was aged 26 years and the Tribunal has adopted multiplier '18', which is not correct. The correct multiplier applicable as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another] is '17'. Thus, the amount awarded by the Tribunal towards loss of earning power is modified to Rs.23,55,710/- (Rs.19,246/- X 12 X 17 X 60/100).

13.As far as the contention of the appellant that he spent a sum of Rs.6,00,000/- towards medical expenses and the Tribunal awarded only a sum of Rs.2,54,564/- is without merits. The Tribunal considering Exs.P3/Medical Bills and P29/Prescription and bill, awarded compensation, which is proper. The appellant has taken treatment in Apollo Hospital from 23.01.2007 to 23.04.2007 as in-patient for three months and the appellant produced Ex.P4/special nursing charges for a sum of Rs.30,900/-. The Tribunal rejected the same on the ground that appellant did not examine the Author of Ex.P4 and awarded only a sum of Rs.15,000/- towards attendant charges. During the treatment period as in-patient, the family members of the appellant would have attended him and hence appellant is entitled to a sum of Rs.500/- per day. Thus, the appellant is entitled to a sum of Rs.45,500/- (Rs.500/- X 91 days) towards attendant charges. This amount is in addition to Rs.15,000/- granted by the Tribunal as Special Nursing Charges. Considering the nature of injuries, period of treatment taken and disability, the amounts awarded by the Tribunal towards extra nourishment and transportation are meagre and the same are hereby enhanced to Rs.25,000/- and Rs.10,000/- respectively. The Tribunal has not awarded any amount towards loss of amenities and future medical expenses. The appellant is entitled to a sum of Rs.25,000/- each towards loss

of amenities and future medical expenses respectively. The amounts awarded by the Tribunal towards pain and sufferings, medical expenses and damages to clothes are just and reasonable and hence, the same are hereby confirmed.

14.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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 capacity	11,24,410/-	23,55,710/-	Enhanced
2.	Pain and sufferings	50,000/-	50,000/-	Confirmed
3.	Loss of income	52,056/-	57,738/-	Enhanced
4.	Extra nourishment	6,000/-	25,000/-	Enhanced
5.	Transportation	5,000/-	10,000/-	Enhanced
6.	Medical expenses	2,54,564/-	2,54,564/-	Confirmed
7.	Damages to clothes	1,000/-	1,000/-	Confirmed
8.	Special Nursing Charges	15,000/-	15,000/-	Confirmed
9.	Loss of amenities	-	25,000/-	Granted
10.	Future medical expenses	-	25,000/-	Granted
11.	Attendant charges	-	45,500/-	Granted
	Total	Rs.15,08,030/- rounded off to Rs.15,08,500/-	Rs.28,64,512/- rounded off to Rs.28,64,500/-	enhanced by Rs.13,56,000/-

15.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at

Rs.15,08,500/- is hereby enhanced to Rs.28,64,500/- 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 the necessary Court fee on the enhanced amount of 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, to the credit of M.C.O.P.No.2669 of 2007 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, 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 making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

krk

To

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

Copy To

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

+lcc to Mr.K.V.MuthuVisakan, Advocate, S.R.No.35754

+lcc to Mr.J.Chandran, Advocate, S.R.No.36017

C.M.A.No.2247 of 2013

SSI(CO)
CS/04/03/2021