

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2705 of 2012

D.Gnanasekar

.. Appellant /Petitioner

Vs.

1.C.Balaji

(R-1 ex-parte in lower Court)

2.M/s.United India Insurance Company Limited,

Andiappa Gramani Street,

Royapuram, Chennai-600 013.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.01.2012 made in M.C.O.P.No.2304 of 2007 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai.

For Appellant : Mr.T.G.Balachandran

For R2 : Ms.Ratnathara

J U D G M E N T
सत्यमेव जयते

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 31.01.2012 made in M.C.O.P.No.2304 of 2007 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai.

2.The appellant is the claimant in M.C.O.P.No.2304 of 2007 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai. He filed the above claim petition,

Page numbers

claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 23.05.2007.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to rash and negligent driving by the driver of the Auto Rickshaw belonging to the first respondent herein and directed the second respondent-Insurance Company, being insurer of the Auto Rickshaw to pay a sum of Rs.1,43,500/- 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 in the accident, the appellant sustained fracture of both bones right leg and distal radius right. P.W.2/Doctor assessed the disability suffered by the appellant as 60% but the Tribunal reduced the percentage of disability to 50% without any valid reason and awarded a meagre sum of Rs.1,00,000/- towards disability. The appellant's right leg movement was restricted to 30 degrees and hence, the Tribunal ought to have adopted multiplier method for granting compensation towards disability. Due to the injuries and disability, the appellant has taken treatment as in-patient at Government General Hospital, Chennai-14, Voluntary Health Services Hospital and Sri Ramachandra Hospital totally for 118 days in various spells and the Tribunal has not awarded any amount towards attendant charges. Due to the severity of the injuries caused, the appellant is unable to continue his D.M.E. studies and the Tribunal has not granted any amount towards loss of education. The amounts awarded by the Tribunal under different heads are meagre and therefore, prayed for enhancement of compensation.

6.Per contra, Ms.Ratnathara, learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal reduced the percentage of disability from 60% to 50% on the ground that assessment of disability by P.W.2/Doctor is on the higher side. The appellant failed to prove that he suffered functional disability and hence, he is not entitled to compensation by adopting multiplier method. The appellant is not entitled to any amount towards attendant charges and loss of education, as he has not produced any valid documents to prove the same. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

Page numbers

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

8. It is the contention of the appellant that he suffered fracture of both bone right leg and fracture distal radius right. P.W.2/doctor deposed that the fracture is united with widening and the appellant is facing difficulty to fold the right leg, movements restricted to 30 degree and grip power is reduced in right hand and assessed the disability of the appellant at 60%. The Tribunal reduced the percentage of disability to 50% on the ground that assessment of disability by P.W.2/Doctor is on the higher side and awarded a sum of Rs.1,00,000/- (Rs.2,000 X 50% of disability) by fixing Rs.2,000/- per percentage of disability. The 2nd respondent-Insurance Company did not let in any contra evidence to disprove the contention of P.W.2/Doctor and Ex.P14/disability certificate. Therefore, the appellant is entitled to compensation for 60% of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,20,000/- (Rs.2,000 X 60% of disability). The appellant has not proved that he has suffered functional disability and loss of earning capacity and hence he is not entitled to compensation by adopting multiplier method. As per Ex.P3/discharge summary, the appellant has taken treatment in the Government General Hospital, Chennai, as in-patient from 28.05.2007 to 07.06.2007 for a period of 14 days. Further, as per Ex.P4/discharge summary, he took continuous treatment in the very same hospital as inpatient from 26.09.2007 to 23.10.2007 for a period of 27 days. As per Exs.P5, P6, P7/discharge summary, he took treatment at Valuntary Health Services Hospital as inpatient from 10.04.2008 to 12.05.2008, 10.04.2009 to 16.04.2009, 18.05.2009 to 02.06.2009 and from 03.08.2009 to 25.08.2009. Further, as per Exs.P8/discharge summary, he took inpatient treatment at Sri Ramachandra Hospital from 14.01.2009 to 27.11.2009 and as per Ex.P9/discharge summary, he took continuous treatment in the same hospital as outpatient. Totally, the appellant has taken treatment as inpatient for 118 days and the Tribunal has not awarded any amount towards attendant charges. Therefore, the appellant is entitled to a sum of Rs.35,400/- (Rs.300/- X 118 days) towards attendant charges at the rate of Rs.300/- per day.

9. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards pain & suffering, extra nourishment, Loss of amenities & mental agony and transportation are meagre and the same are enhanced to Rs.20,000/-, Rs.25,000/-, Rs.10,000/- and

Page numbers

Rs.10,000/- respectively. The appellant has not produced any material evidence to prove that due to the injuries suffered by him, he is unable to continue his studies. Therefore, the appellant is not entitled to any amount towards loss of education. 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	5,000/-	10,000/-	enhanced
2.	Extra nourishment	5,000/-	25,000/-	enhanced
3.	Damage to clothes	500/-	500/-	confirmed
4.	Medical expenses	18,000/-	18,000/-	confirmed
5.	Loss of amenities and mental agony	5,000/-	10,000/-	enhanced
6.	Pain & suffering	10,000/-	20,000/-	enhanced
7.	Attendant charges	-	35,400/-	granted
8.	Disability	1,00,000/-	1,20,000/-	enhanced
	Total	Rs.1,43,500/-	Rs.2,38,900/-	enhanced by Rs.95,400/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,43,500/- is hereby enhanced to Rs.2,38,900/- 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, if any on the enhanced amount of compensation now determined by this Court. The second 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.2304 of 2007 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai.

Page numbers

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. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

gbi/krk

To

1.The III Judge,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

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

+1cc to M/s.Rathnathara, Advocate SR.19182

+1cc to Mr.T.G.Balachandran, Advocate SR.19019.

C.M.A.No.2705 of 2012

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Page numbers