

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2647 of 2015

P.Rajendran

.. Appellant/Petitioner

Vs.

1.G.Pandiyan

2.ICICI Lombard Insurance Co. Ltd.,
1st floor, Arihant plaza 84 and 85
Walltax road, Chennai-3.

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.02.2015 made in M.C.O.P.No.4303 of 2009 on the file of Motor Accidents Claims Tribunal, Special Sub Court No.II, Chennai.

For Appellant : Mr.Richard Suresh Kumar

For R2 : Mr.K.Poomalai

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 18.02.2015 made in M.C.O.P.No.4303 of 2009 on the file of Motor Accidents Claims Tribunal, Special Sub Court No.II, Chennai.

2.The appellant is claimant in M.C.O.P.No.4303 of 2009 on the file of Motor Accidents Claims Tribunal, Special Sub Court No.II, Chennai. He filed the said claim petition claiming a sum of Rs.18,87,000/- as compensation for the injuries sustained by him in the accident that took place on 18.01.2019.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Tata van belonging to the 1st respondent and directed the 2nd respondent/ Insurance Company being insurer of the said van to pay a sum of Rs.14,00,000/- 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 seeking enhancement of compensation.

5. The learned counsel appearing for the appellant/claimant contended that the appellant sustained fracture of right acetabulum, right tibia, right frontal sinus, root of right orbit, right zygoma, right sphenoid wing, right 1st rib, right hip dislocation, right iliatus hematoma, displaced fracture of right zygoma, right parietal sub dural hematoma, interhemispheric, interpeduncular and right parietal sub arachnoid hemorrhage, contusions in left frontal and right temporal regions. At the time of accident, the appellant was earning a sum of Rs.10,000/- per month by working as commission agent. The Tribunal without considering the same, fixed a sum of Rs.5,000/- as monthly income of the appellant and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not produced any document to prove that he was earning a sum of Rs.10,000/- per month. In the absence of any material evidence, the Tribunal has rightly fixed the monthly income of the appellant as Rs.5,000/-. The Tribunal after considering the materials available on record, has awarded just compensation. The appellant has not made out any case for enhancement of compensation 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 2nd respondent and perused all the materials available on record.

8. The contention of the appellant is that he was aged 42 years at the time of accident and was earning a sum of Rs.10,000/- per month by working as a commission agent. The appellant failed to prove the said contention. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.5,000/- as monthly income of the appellant. The accident is of the year 2009 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.7,500/- is fixed as monthly income of the appellant. The appellant sustained fracture of right acetabulum, right tibia, right frontal sinus, root of right orbit, right zygoma, right sphenoid wing, right 1st rib and right hip dislocation. P.W.2/Doctor, who was examined to prove the injuries sustained by the appellant, assessed the disability of the appellant as 65%. The Tribunal accepted the disability assessed by P.W.2/Doctor and fixed disability of the appellant as 65%. Considering the nature of injuries and disability, the Tribunal adopted multiplier method while awarding compensation towards

loss of future earning capacity. By fixing monthly income at Rs.7,500/-, the amount awarded by the Tribunal towards loss of future earning capacity is modified to Rs.8,19,000/- (Rs.7,500/- X 12 X 14 X 65%). The appellant has not sought any enhancement under other heads. Therefore, the amounts awarded by the Tribunal under all the other heads 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 or reduced
1.	Future loss of earning capacity	5,46,000	8,19,000	Enhanced
2.	Pain and suffering	1,00,000	1,00,000	Confirmed
3.	Transportation charges	16,000	16,000	Confirmed
4.	Extra nourishment	13,000	13,000	Confirmed
5.	Attendant charges	15,000	15,000	Confirmed
6.	Loss of enjoyment of amenities	50,000	50,000	Confirmed
7.	Continuing permanent disability	1,00,000	1,00,000	Confirmed
8.	Loss of income for six months	30,000	30,000	Confirmed
9.	Medical expenses	4,80,000	4,80,000	Confirmed
10.	Future attendant charges	50,000	50,000	Confirmed
	Total	14,00,000	16,73,000	Enhanced by Rs.2,73,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,00,000/- is hereby enhanced to Rs.16,73,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced 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. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Subordinate Judge No.II
(Dealing with MCOP cases)
The Motor Accident Claims Tribunal
Chennai.

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

+1cc to Mr.Richard Suresh Kumar, Advocate, S.R.No.1643

+1cc to Mr.K.Poomalai, Advocate, S.R.No.1750

C.M.A.No.2647 of 2015

SAI (CO)
CS/23/11/2020

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