

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2856 of 2015

Anbazhagan

.. Appellant/Petitioner

Vs.

1.Tamilselvi

(Since R1 remained exparte before the Tribunal
his presence may be dispensed with)

2.Oriental Insurance Company Ltd.,

'Oriental House,'

No.115, Broadway Road,

Chennai-600 108

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.07.2015 made in MACT O.P.No.836 of 2011 on the file of the Motor Accidents Claims Tribunal, Chennai, V Judge Small Causes, Chennai.

For Appellant : Mr.K.F.Terry ChellaRaja

For R2 : Mr.K.Vinod
for M/s.Elveera Ravindran

R1 : Exparte

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 16.07.2015 made in MACTO.P.No.836 of 2011 on the file of the Motor Accidents Claims Tribunal, V Judge Small Causes, Chennai.

2.The appellant is the claimant in MACTO.P.No.836 of 2011 on the file of the Motor Accident Claims Tribunal, V Judge Small Causes, Chennai. He filed the said claim petition claiming a sum of Rs.1,83,000/- as compensation for the injuries sustained by him, in the accident that took place on 04.04.2010.

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 car belonging to the 1st respondent and insured with the 2nd respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.1,83,000/- as compensation to the appellant.

4. Not being satisfied with the quantum of compensation 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 contended that the appellant was aged 25 years at the time of accident and was earning a sum of Rs.450/- per day by working as a Manson. In the accident, the appellant sustained fracture in mandible right shoulder dislocation and fracture in right ribs. He has taken treatment as in-patient for 13 days. Due to the injuries and disability, he could not continue his work as he was doing earlier. To prove the same, P.W.2 Doctor was examined, who assessed the disability of the appellant as 75%, but without giving valid reasons, the Tribunal reduced the disability to 40%. The Tribunal considering nature of injuries and disability assessed by P.W.2 Doctor ought to have awarded compensation separately for permanent disability and loss of earning capacity by applying multiplier method. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that 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 2nd respondent/Insurance Company and perused all the materials available on record.

8. It is the contention of the appellant that he has sustained grievous injuries, Cranio facial bone fracture, with contusion brain, left scaploid fracture, fracture in mandible right shoulder dislocation and fracture in right ribs. P.W.2/Doctor examined the appellant and assessed the disability of the appellant for four parts of the body as 75%. The respondents have not let in any contra evidence to disprove the contention of the appellant. The Tribunal reduced the same to 40% holding that the percentage of disability assessed by the doctor is on the higher side. Considering the nature of injuries and disability and evidence of P.W.2, the appellant is entitled to compensation for disability at 60%. Hence, a sum of

Rs.1,80,000/- (Rs.3,000/- X 60%) is granted towards disability for 60% disability.

9. According to the appellant, he was aged 25 years at the time of accident and was earning a sum of Rs.450/- per day by working as a Mason. The appellant has not produced any document to substantiate the said contention. In the absence of material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.7,500 /- per month as monthly income of the appellant and awarded a sum of Rs.15,000/- towards loss of income for a period of two months. The appellant failed to prove that he suffered functional disability and loss of earning. Hence, he is not entitled to compensation by applying multiplier method. The accident is of the year 2010 and the monthly income fixed by the Tribunal is not meagre. Due to the injuries and disability sustained by the appellant in the accident, he would not have attended his work atleast for a period of six months. Hence, the appellant is entitled to a sum of Rs.45,000/- (Rs.7,500/- X 6) towards loss of income for six months. The appellant has taken treatment as in-patient in Government Hospital, Panruti and Government Hospital, Cuddalore from 04.04.2010 to 17.04.2010. The amounts awarded by the Tribunal towards transport to hospital & extra nourishment, attendant charges and loss of amenities are meagre. Considering the period of treatment and nature of injuries sustained by the appellant, this Court awards a sum of Rs.20,000/-, Rs.10,000/- and Rs.20,000/- towards transport to hospital, extra nourishment, attendant charges and loss of amenities respectively. The Tribunal has not awarded any amount for loss of clothes. A sum of Rs.1,000/- is granted towards loss of clothes. The amounts awarded by the Tribunal towards medical expenses and pain & sufferings 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.	Transportation and Extra Nourishment	10,000	20,000	Enhanced
2.	Attendant Charges	3,000	10,000	Enhanced
3.	Medical Expenses	5000	5000	Confirmed
4.	Disability	1,20,000	1,80,000	Enhanced

5.	Loss of earning	15000	45,000	Enhanced
6.	Pain and Sufferings	20,000	20,000	Confirmed
7.	Loss of amities	10,000	20,000	Enhanced
8.	Loss of cloth	-	1000	Granted
	Total	Rs.1,83,000/-	Rs.3,01,000/-	Enhanced by Rs.1,18,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,83,000/- is hereby enhanced to Rs.3,01,000/- 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 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

//True Copy//

Sub Assistant Registrar

vsn

To

1. The Motor Accidents Claims Tribunal,
V judge Small Causes, Chennai.

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

+1cc to Mr.M.Malar, Advocate, S.R.No. 11459

+1cc to Mr.Elveera Ravindran, Advocate, S.R.No. 11462

C.M.A.No.2856 of 2015

NMI (CO)
GN(09/02/2021)