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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1730 of 2016

S.Sivakumar

..Appellant/Petitioner

Vs.

1. M/s.India Land Facilities Management
Private Limited,
No.14, 3rd Main Road,
Ambattur Industrial Estate,
Chennai 600 058.
2. ICICI Lombard General Insurance Co. Ltd.,
Chotabhai Towers,
No.140, Nungambakkam High Road,
Chennai 600 006.
now functioning at:
Harihant Plaza, 1st floor,
No.83/84, Walltax Road,
Chennai 600 003.

..Respondents/Respondents

(1st respondent remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.02.2016 made in M.C.O.P.No.238 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1 (dealing wiht M.C.O.P cases), Chennai.

For Appellant : Ms.P.T.Salim Fathima

For Respondents : No appearance for R1
Mr.K.Poomalai for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 29.02.2016 made in M.C.O.P.No.238 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1 (dealing wiht M.C.O.P cases), Chennai.



2.The appellant is the claimant in M.C.O.P.No.238 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1 (dealing with M.C.O.P cases), Chennai. He filed the above said claim petition, claiming a sum of Rs.16,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.09.2012.

3.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 van belonging to the first respondent and directed the second respondent, as insurer of the vehicle to pay a sum of Rs.2,26,000/- 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 contended that the appellant suffered fracture in the right tibia lateral condyle with diephypedal extension and sustained multiple injuries in the accident. The appellant examined P.W.2/Doctor and proved the nature of injuries and disability suffered by him. P.W.2/Doctor assessed the disability suffered by the appellant as 40%. The Tribunal has reduced the percentage of disability to 35% and awarded a meagre sum of Rs.1,05,000,- towards disability at the rate of Rs.3,000/- per percentage. The appellant was working as Software Engineer in Tata Consultancy Services, Sirusery at the time of accident and was earning a sum of Rs.6,00,000/- per annum. Due to the fracture, he could not continue his work as he was doing earlier and he was immobilised for more than four months. The Tribunal failed to award any amount towards loss of income. 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.Though notice has been served on the first respondent and his name is printed in the cause list, there is no representation on behalf of the first respondent either in person or through counsel.



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

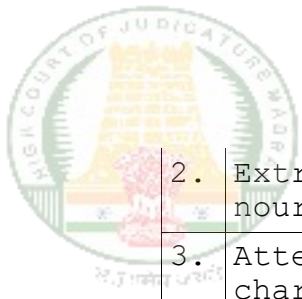
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9. It is the contention of the appellant that he suffered fracture in the right tibia lateral condyle with diephypedal extension, fracture shaft, right commiunted tibia and Haemarthosis right knee in the accident. To substantiate the injuries sustained by him, he has examined Dr. Amarnath R. Sowlee as P.W.2, who assessed the disability of the appellant as 40% and marked disability certificate as Ex.P9. The Tribunal reduced the percentage of disability assessed by P.W.2/Doctor to 35% on the ground that P.W.2/Doctor, is not the doctor who has given treatment to the appellant. The reason given by the Tribunal for reducing the percentage of disability is not proper. Considering the nature of injuries sustained by the appellant along with the evidence of P.W.2/Doctor, the appellant is entitled to compensation for 40% disability at the rate of Rs.3,000/- per percentage of disability. Accordingly, a sum of Rs.1,20,000/- (Rs.3,000/- X 40%) is awarded towards disability.

10. According to the appellant, he was an employee of Tata Consultancy Services. The appellant himself admitted in the cross examination that there was no loss of income during the period of his treatment. Hence, he is not entitled to get any compensation towards loss of income.

11. According to the appellant, he has taken treatment in the hospital as in-patient from 27.09.2012 to 11.10.2012. The Tribunal has awarded a meagre sum of Rs.6,000/- towards transportation, Rs.10,000/- towards extra nourishment, Rs.15,000/- towards attendant charges and Rs.1,000/- towards damage to clothes. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards transportation, extra nourishment, attendant charges and damage to clothes are enhanced to Rs.10,000/-, Rs.20,000/-, Rs.15,000/- and Rs.2,000/- respectively. The amounts granted by the Tribunal under the heads pain and sufferings and loss of future amenities are just and reasonable and hence, they 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	6,000/-	10,000/-	enhanced



2.	Extra nourishment	10,000/-	20,000/-	enhanced
3.	Attendant charges	4,000/-	15,000/-	enhanced
4.	Damage to clothes	1,000/-	2,000/-	enhanced
5.	Disability	1,05,000/-	1,20,000/-	enhanced
6.	Pain & sufferings	50,000/-	50,000/-	confirmed
7.	Loss of future amenities	50,000/-	50,000/-	confirmed
	Total	Rs.2,26,000/-	Rs.2,67,000/-	enhanced by Rs.41,000/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,26,000/- is hereby enhanced to Rs.2,67,000/- 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 necessary Court fee, if any, on the enhanced compensation. The second respondent 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 by making necessary applications before the Tribunal. No costs.

s/d-
Assistant Registrar (CS-IV)

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Sub-Assistant Registrar

vkr
To

1. The Motor Accident Claims Tribunal (Dealing with M.C.O.P cases)
Special Subordinate Judge No.1,
Chennai.



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

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+1 CC to Mr.M. Swamikannu, Advocate sr 12947
+1 CC to Mr.K.Poomalai, Advocate sr 13819.

C.M.A.No.1730 of 2016

PVS (CO)
SP(11/08/2021)