

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1758 of 2016

Samydurai

... Appellant/Petitioner

Vs.

1.Sathaiah

2.ICICI Lombard Motor Insurance Company Limited,
Divisional Office - 1,
No.66, Greams Road,
Chennai - 6.

... Respondents /Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 17.06.2014 made in M.C.O.P.No.4910 of 2009 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Ms.A.Subadra
for Ms.M.Malar

Respondents : No appearance for 2nd Respondent
Ist Respondent-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 17.06.2014 made in M.C.O.P.No.4910 of 2009 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.4910 of 2009 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 04.12.2008.

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 directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.2,23,000/- 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 was an agriculturist and doing coolie work and was earning a sum of Rs.350/- per day. He has sustained fracture on his nasal bone with two teeth left upper jaw, left fronto SDH with cerebral edema, fracture of left olecranon bone. The appellant took treatment as an in-patient at Government Hospital, Ulundurpet from 04.12.2008 till 06.12.2008 and he also took Puthur treatment from 09.12.2008 till 25.12.2008. P.W.2/Doctor has assessed the disability of the appellant as 68% but the Tribunal reduced the same to 65%, without giving any valid reason. The Tribunal ought to have adopted multiplier method for computing disability considering the injuries sustained by the appellant. The Tribunal has not granted any amount towards attendant charges. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Though notice was served on the 2nd respondent/Insurance Company and its name is printed in the cause list, there is no representation on behalf of them either in person or through counsel.

7. The 1st respondent remained ex-parte before the Tribunal and notice to the 1st respondent is dispensed with.

8. Heard the learned counsel appearing for the appellant and perused all the materials available on record.

9. From the materials available on record, it is seen that according to the appellant, he was aged 20 years and was an agriculturist and doing coolie work and was earning a sum of Rs.350/- per day. He failed to prove the said contention. In the absence of any evidence with regard to loss of income, the Tribunal has granted a sum of Rs.18,000/- towards loss of income which is meagre. The accident is of the year 2008 and a sum of Rs.6,500/- is fixed as monthly income of the appellant. Due to the injury, the appellant would not have attended his work at least for a period of six months. Therefore, the appellant is entitled to a sum of Rs.39,000/- (Rs.6,500/- X 6) towards loss of income for six months. The appellant has not proved that he

suffered functional disability and hence he is not entitled for compensation by applying multiplier method. The appellant examined Dr.J.R.R.Thiagarajan as P.W.2, who assessed the disability of the appellant as 68% and Ex.P5/disability certificate was marked to prove the same. The Tribunal reduced the same to 65% holding that the percentage of disability assessed by the doctor is slightly on the higher side, which is not proper. The appellant is entitled to compensation for 65% disability. Hence, a sum of Rs.1,36,000/- (Rs.2,000/- X 68%) is awarded towards disability by fixing 68% disability and by awarding Rs.2,000/- per percentage. According to the appellant, he has taken treatment as in-patient at Government Hospital, Ulundurpet from 04.12.2008 till 06.12.2008 and he also taken Puthur treatment from 09.12.2008 till 25.12.2008. The Tribunal has not granted any amount towards attendant charges. This Court awards a sum of Rs.10,000/- towards attendant charges. Considering the nature of injuries, the amount granted by the Tribunal towards extra nourishment is meagre and the same is hereby enhanced to Rs.10,000/-. The amounts granted by the Tribunal under all the other heads 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.	Loss of income	18,000	39,000	Enhanced
2.	Transportation	7,000	7,000	Confirmed
3.	Extra nourishment	7,000	10,000	Enhanced
4.	Damages to clothes	1,000	1,000	Confirmed
5.	Attendant Charges	-	10,000	Granted
6.	Medical expenses	10,000	10,000	Confirmed
7.	Mental agony	10,000	10,000	Confirmed
8.	Loss of amenities	10,000	10,000	Confirmed
9.	Pain and sufferings	30,000	30,000	Confirmed
10.	Disability	1,30,000	1,36,000	Enhanced

	Total	Rs.2,23,000/-	Rs.2,63,000	Enhanced by Rs.40,000/-
--	-------	---------------	-------------	-------------------------

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,23,000/- is hereby enhanced to Rs.2,63,000/- 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

To

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

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

+1cc to M/s.M.Malar, Advocate Sr.271

C.M.A.No.1758 of 2016

nrjk[co]
srg 21/09/2020

WEB COPY