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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2722 of 2013

M.Sivakumar

.. Appellant/Petitioner

Vs.

1.G.N.Sujendra

(R1 remained exparte before the Tribunal)

2.The Oriental Insurance Company Ltd.

No.8, Esplanade Road

LIC buildings, III floor

Chennai-108.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.10.2009 made in M.C.O.P.No.5830 of 2005 on the file of Motor Accident Claims Tribunal, Small Causes Court No.V, Chennai.

For Appellant : Mr.F.Terry Chellaraja

For R2 : No appearance

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 29.10.2009 made in M.C.O.P.No.5830 of 2005 on the file of Motor Accident Claims Tribunal, Small Causes Court No.V, Chennai.

2.The appellant is claimant in M.C.O.P.No.5830 of 2005 on the file of Motor Accident Claims Tribunal, Small Causes Court No.V, Chennai. He filed the said claim petition claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident that took place on 17.04.2005.



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 lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said lorry to pay a sum of Rs.56,500/- 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 seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that at the time of accident, the appellant was earning a sum of Rs.6,000/- per month by working as mason. The Tribunal without considering the same, fixed a sum of Rs.3,500/- as monthly income of the appellant. Due to the accident, the appellant sustained fracture of lateral condyle tibia and has taken treatment as in-patient in Government Kilpauk Medical College Hospital from 18.04.2005 to 31.05.2005. The appellant examined the doctor as P.W.3, who has assessed the disability of the appellant as 40%. The Tribunal awarded only a meagre sum of Rs.35,000/- towards disability. The Tribunal has not awarded any compensation towards damage to clothes, attendant charges, mental agony and loss of amenities. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Though the 2nd respondent/Insurance Company entered appearance through the counsel, there is no representation at the time of arguments.

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

8. It is the contention of the appellant that in the accident, he sustained fracture of lateral condyle tibia. The appellant examined Dr.N.Saichandran as P.W.3, who assessed the disability of the appellant as 40% and marked the disability certificate as Ex.P5 to prove the injuries. The Tribunal awarded a sum of Rs.35,000/- towards disability holding that the disability assessed by P.W.3/Doctor is on the higher side, which is not correct. The respondents did not let in any oral and documentary evidence to disprove the disability assessed by P.W.3/Doctor and disability certificate marked as Ex.P5. Hence,



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the appellant is entitled to compensation for 40% disability at the rate of Rs.1,000/- per percentage of disability, when there is no contra evidence. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.40,000/- (Rs.1,000/- X 40%).

8(i).According to the appellant, he was earning a sum of Rs.6,000/- per month by working as mason at the time of accident. He 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.3,500/- as monthly income of the appellant and awarded a sum of Rs.10,500/- (Rs.3,500/- X 3) towards loss of income for three months. The accident is of the year 2005 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.4,000/- is fixed as monthly income of the appellant. Due to the injuries sustained by the appellant, he would not have attended his work atleast for six months. Thus, a sum of Rs.24,000/- (Rs.4,000/- X 6) is awarded towards loss of income for six months.

8(ii). The appellant contended that he has taken treatment as in-patient in Government Kilpauk Medical College Hospital from 18.04.2005 to 31.05.2005. P.W.3/Doctor in his evidence, has deposed that the appellant has taken conservative treatment. The Tribunal has not awarded any compensation towards damage to clothes, attendant charges and loss of amenities. Considering the nature of injuries and period of treatment taken by the appellant, Rs.500/-, Rs.10,000/- and Rs.5,000/- are awarded towards damage to clothes, attendant charges and loss of amenities respectively. The sum of Rs.2,000/-, Rs.2,000/- and Rs.5,000/- awarded by the Tribunal towards transportation, extra nourishment and pain & suffering are meagre and the same are hereby enhanced to Rs.5,000/-, Rs.5,000/- and Rs.10,000/- respectively. The compensation awarded by the Tribunal towards medical expenses is just and reasonable and hence, the same is 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.	Loss of income	10,500	24,000	Enhanced
2.	Transportation	2,000	5,000	Enhanced
3.	Extra nourishment	2,000	5,000	Enhanced
4.	Medical expenses	2,000	2,000	Confirmed
5.	Pain and suffering	5,000	10,000	Enhanced
6.	Loss of amenities	-	5,000	Granted
7.	Damage to clothes	-	500	Granted
8.	Attendant charges	-	10,000	Granted
9.	Disability	35,000	40,000	Enhanced
	Total	Rs.56,500/-	Rs.1,01,500/-	Enhanced by Rs.45,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.56,500/- is hereby enhanced to Rs.1,01,500/- 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 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

Sd/-
Assistant Registrar (CS-CCC)

// True Copy //

Sub Assistant Registrar

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To

1.The V Judge

The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

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2.The Section Officer

V.R.Section

High Court, Chennai.

+1CC to M/s.M.Malar, Advocate, SR.No. 22938

C.M.A.No.2722 of 2013

CA(CO)

B.VC (01/09/2021)