

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2819 of 2013

S.Sivaraman

.. Appellant

Vs.

1.G.Jayapal

2.Bajaj Allianz General Insurance Co. ltd.,
25/26, College Road,
Nungambakkam, Chennai 600 034.

.. Respondents

(R1 remained exparte before the Tribunal
and notice is dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.03.2013, made in M.C.O.P. No.3854 of 2008, on the file of the III Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr. K. Suryanarayanan

For Respondents: Mr. K. Poomalai (For R2)
remained
R1-Exparte before
the Tribunal

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of the compensation granted by the Tribunal in award dated 25.03.2013, made in M.C.O.P. No.3854 of 2008, on the file of the III Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

2.The appellant-claimant filed M.C.O.P. No.3854 of 2008, on the file of the III Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 20.07.2006.

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 Load Auto belonging to the 1st respondent and directed the 2nd respondent who is the insurer of the offending vehicle to pay a sum of Rs.3,21,500/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 25.03.2013, made in M.C.O.P. No.3854 of 2008, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that in the accident the appellant suffered fracture of both bones at left leg, underwent surgery and his toes in the left foot were amputated and skin grafting was done. The learned counsel appearing for the appellant contended that the appellant suffered 70% partial permanent disability and 45% total permanent disability as assessed by P.W.2 - Doctor. The Tribunal erroneously reduced the disability for the whole body to 25% and granted compensation only for 25% disability. The Tribunal ought not to have reduced the disability fixed by the qualified medical practitioner. The appellant was aged 20 years at the time of accident. The Tribunal failed to grant compensation towards attendant charges, loss of amenities, marital prospects, mental agony and shortening of life. The amounts awarded by the Tribunal for pain and suffering, transportation, disability and extra nourishment are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the percentage of disability assessed by P.W.2 - Doctor is for part of the body. The Tribunal converted the same into whole body and adopted multiplier method for awarding compensation towards disability. The total compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

8.It is the contention of the appellant that in the accident, he sustained injuries, underwent surgery on his left leg and amputation of toes in the left leg. From the award of the Tribunal, it is seen that P.W.2-Doctor has assessed that the appellant suffered 70% partial permanent disability and 45% total permanent disability. The Tribunal considering the evidence of P.W.2-Doctor and the fact that his assessment is

only for a part of the body, fixed 25% disability for the whole body and awarded compensation by applying multiplier method. The same is in order. The appellant was aged 20 years at the time of accident. The correct multiplier applicable as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TN MAC 1 (SC) [Smt.Sarla Verma & Ors. v. Delhi Transport Corporation & Another.] is '18'. The Tribunal has erroneously applied the multiplier '17'. Hence, applying the correct multiplier, the compensation awarded by the Tribunal towards disability is modified to Rs.2,43,000/- [Rs.4,500/- x 12 x 18 x 25%]. The appellant has taken treatment as inpatient in Government Stanley Hospital from 20.07.2006 to 31.08.2006, for a period of 42 days. The Tribunal has not awarded any amount for attendant charges. Considering the age and nature of injuries and disability, a sum of Rs.25,000/- is granted towards attendant charges, Rs.30,000/- towards loss of amenities and Rs.1,00,000/- towards loss of marital prospects. The amounts awarded by the Tribunal towards extra nourishment and transportation charges are meagre and hence, the same are enhanced to Rs.15,000/- and Rs.10,000/- respectively. The Tribunal has not awarded any amount towards medical expenses. Though the appellant has taken treatment in a Government Stanley Hospital, he would have spent some amount towards medical expenses. Hence, a sum of Rs.10,000/- is awarded towards medical expenses. The amounts awarded by the Tribunal under 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.	Permanent Disability	2,29,500/-	2,43,000/-	Enhanced
2.	Loss of income	27,000/-	27,000/-	Confirmed
3.	Pain and suffering	50,000/-	50,000/-	Confirmed
4.	Transport to Hospital	5,000/-	10,000/-	Enhanced
5.	Extra nourishment	10,000/-	15,000/-	Enhanced
6.	Attendant charges	-	25,000/-	Granted
7.	Medical expenses	-	10,000/-	Granted

8.	Marital prospects	-	1,00,000/-	Granted
9.	Loss of amenities	-	30,000/-	Granted
	Total	3,21,500/-	5,10,000/-	Enhanced by Rs.1,88,500/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.3,21,500/- is enhanced to Rs.5,10,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.3854 of 2008. On such deposit, the appellant is permitted to withdraw the enhanced award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.1,88,500/-. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

gsa
To

1. The III Judge,
Small Causes Court,
(Motor Accident Claims Tribunal), Chennai.

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

+1cc to Mr.K. Suryanarayanan, Advocate SR.No.34853

+1cc to Mr.K. Poomalai, Advocate SR.No.34849

C.M.A.No.2819 of 2013

SS (CO)
GMY (12/05/2021)