

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2960 of 2013

Siva

.. Appellant/Petitioner

Vs.

1.Umamageshwari

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

2.The ICICI Lombard General
Insurance Company Ltd.

No.84/85, Walltax road, Chennai-3.

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.03.2013 made in M.C.O.P.No.2019 of 2011 on the file of Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai.

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

For R2 : Mrs.R.Sreevidhya

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 28.03.2013 made in M.C.O.P.No.2019 of 2011 on the file of Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai.

2.The appellant is claimant in M.C.O.P.No.2019 of 2011 on the file of Motor Accident Claims Tribunal, Small Causes Court No.III, 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 30.03.2011.

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 Tata magic vehicle belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said Tata magic vehicle to pay a sum of Rs.1,93,100/- 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.Though the learned counsel appearing for the appellant raised various grounds in the grounds of appeal with regard to enhancement of compensation, when the matter is taken up for hearing, she contended that the appellant was aged 18 years at the time of accident and was earning a sum of Rs.6,000/- per month by working as a cleaner in a school van. The Tribunal without considering the same, fixed only a meagre sum of Rs.4,500/- as monthly income of the appellant. The Tribunal ought to have fixed a sum of Rs.6,000/- as monthly income of the appellant and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not produced any document to prove his monthly income. In the absence of any material evidence to prove the income of the appellant, the Tribunal fixed a sum of Rs.4,500/- as monthly income of the appellant, which is not meagre. The Tribunal after considering all the materials available on record, awarded just compensation. The appellants have 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 the learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

8. It is the contention of the appellant that he was aged 18 years at the time of accident and was earning a sum of Rs.6,000/- per month by working as a cleaner in St.Marys Matriculation School van, Nandhivaram, Chennai. The appellant 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.4,500/- as monthly income of the appellant. The accident is of the year 2011 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.5,500/- is fixed as monthly income of the appellant. Due to the injuries sustained by him in the accident, the appellant

would not have attended his work atleast for a period of five months. Thus the amount awarded by the Tribunal towards loss of income is enhanced to Rs.27,500/- (Rs.5,500/- X 5). Due to the accident, the appellant suffered fracture of shaft in right femur and his left leg was shortened by 1 ½ inch. He examined Doctor as P.W.4, who has assessed the disability of the appellant as 45% and marked the disability certificate as Ex.P8 to prove the injuries. The Tribunal reduced the disability of the appellant to 15% for whole body on the ground that the disability assessed by P.W.4/Doctor is not for the whole body and applied multiplier 16, which are proper. Thus, the compensation awarded by the Tribunal towards permanent disability is modified to Rs.1,58,400/- (Rs.5,500/- X 12 X 16 X 15/100). The sum of Rs.5,000/- each awarded by the Tribunal towards transportation and extra nourishment are meagre. Considering the nature of injuries sustained by the appellant, the compensation awarded by the Tribunal towards transportation and extra nourishment are hereby enhanced to Rs.10,000/- each. The amounts awarded by the Tribunal under all 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 or reduced
1.	Loss of income	22,500	27,500	Enhanced
2.	Transportation	5,000	10,000	Enhanced
3.	Extra nourishment	5,000	10,000	Enhanced
4.	Damage to clothes	1,000	1,000	Confirmed
5.	Permanent disability	1,29,600	1,58,400	Enhanced
6.	Pain and suffering	30,000	30,000	Confirmed
	Total	1,93,100	2,36,900	Enhanced by Rs.43,800/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,93,100/- is hereby enhanced to Rs.2,36,900/- 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 withdrawn. No costs.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

kj

To

1. The III Judge
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.
2. The Section Officer
V.R.Section
High Court, Chennai.

+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.20288
+1cc to Ms.M.Malar, Advocate, S.R.No.19315

C.M.A.No.2960 of 2013

AD(CO)
CS/15/03/2021

सत्यमेव जयते

WEB COPY