



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3033 of 2013

D.Manoharan

... Appellant/Petitioner

Vs.

1.A.Panneerselvam

2.P.S.Geetha

3.Reliance General Insurance Company Ltd.
Having Branch Office at
Sri Lakshmi Complex
Bharathi street
Omalur main road
Swarnapuri, Salem-4.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.03.2013 made in M.C.O.P.No.286 of 2012 on the file of Motor Accident Claims Tribunal, II Additional Sub Court, Erode.

For Appellant : Mr.S.Kaithamalai Kumaran

For R1 : Left

For R2 : No appearance

For R3 : Mr.S.Arunkumar

J U D G M E N T

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 27.03.2013 made in M.C.O.P.No.286 of 2012 on the file of Motor Accident Claims Tribunal, II Additional Sub Court, Erode.

2.The appellant is claimant in M.C.O.P.No.286 of 2012 on the file of Motor Accident Claims Tribunal, II Additional Sub Court,



3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, the driver of the TATA Ace van belonging to the 2nd respondent and directed the 3rd respondent/Insurance Company being insurer of the said van to pay a sum of Rs.1,00,000/- as compensation to the appellant.

5. The learned counsel appearing for the appellant contended that in the accident, the appellant sustained grievous injuries all over the body. He examined himself as P.W.1 and the Doctor as P.W.2 to prove the nature of injuries. P.W.2/Doctor after examining the appellant certified that the appellant has suffered 27% disability and issued Ex.P11/disability certificate. The Tribunal without giving any reason reduced the disability to 22% and awarded compensation at the rate of Rs.2,000/- per percentage of disability, which is meagre. The appellant was working as a building mason and was earning a sum of Rs.15,000/- per month. After the accident, the appellant could not continue his work as he was doing earlier and lost his entire earning power. The Tribunal ought to have adopted multiplier method to award compensation. The Tribunal has not awarded any compensation towards attendant charges. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7. Though notice has been served on the 2nd respondent and her name is printed in the cause list, there is no representation for the 2nd respondent either in person or through counsel.



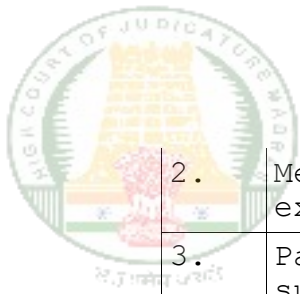
WEB COPY

8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 3rd respondent/Insurance Company and perused the entire materials on record.

9. It is the contention of the appellant that in the accident, he suffered fractures on head, left shoulder, left hand and has taken treatment as in-patient in Vijaya Hospital, Erode, from 07.10.2009 to 12.10.2009 and again admitted in Shabari Hospital, Erode, from 12.10.2009 to 22.10.2009. The appellant examined himself as P.W.1 and examined the Doctor who treated him as P.W.2 to prove the nature of injuries. P.W.2/Doctor examined the appellant and certified that the appellant has suffered 27% disability. The Tribunal reduced the same to 22% on the ground that the disability assessed by P.W.2/Doctor is on the higher side and awarded a sum of Rs.2,000/- per percentage of disability, which is meagre. The respondents did not let in any contra evidence to disprove the disability assessed by P.W.2/Doctor. Therefore, the appellant is entitled to compensation for 27% disability. The appellant has not proved that he suffered functional disability and lost his earning capacity. Therefore, the appellant is not entitled to compensation by adopting multiplier method. The accident is of the year 2009 and hence, a sum of Rs.3,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.81,000/- (Rs.3,000/- X 27%).

9(i). According to the appellant, he has taken treatment as in-patient in Vijaya Hospital, Erode, from 07.10.2009 to 12.10.2009 and again admitted in Shabari Hospital, Erode, from 12.10.2009 to 22.10.2009. The appellant has not produced any discharge summary to prove the same. The Tribunal has not awarded any amount towards attendant charges. Considering the nature of injuries and disability suffered by the appellant, a sum of Rs.5,000/- is awarded towards attendant charges. 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.	Disability	44,000	81,000	Enhanced



WEB COPY

2.	Medical expenses	33,000	33,000	Confirmed
3.	Pain and suffering	15,000	15,000	Confirmed
4.	Extra nourishment	5,000	5,000	Confirmed
5.	Transportation	3,000	3,000	Confirmed
6.	Attendant charges	-	5,000	Granted
	Total	1,00,000	1,42,000	Enhanced by Rs.42,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,00,000/- is hereby enhanced to Rs.1,42,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3rd respondent/Insurance Company is directed to deposit the 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 award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kj

To

The II Additional Subordinate Judge,
Motor Accident Claims Tribunal, Erode.



Copy to

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

+1cc to Mr.S.Arunkumar, Advocate Sr.39635
+1cc to Mr.S.Kaithamalaikumaran, Advocate Sr.39103

C.M.A.No.3033 of 2013

ssp[col]
srg 17/08/2021