

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.3054 OF 2013

Parthiban

.. Appellant/Claimant

Vs.

1.Murugan

2.Palanisamy

3.The United India Insurance Co. Ltd.

Shunmuga complex, 1-15

24-H, I floor, new Edapadi road

Sankari, Division office 1090

A.R.complex, I floor

P.H.road, Chennai-600 084.

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.10.2012 made in M.C.O.P.No.585 of 2009 on the file of Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai.

For Appellant : Mr.F.Terry Chellaraja
for M/s.M.Malar

For R3 : Ms.I.Malar

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 08.10.2012 made in M.C.O.P.No.585 of 2009 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.585 of 2009 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 20.10.2008.

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 respondents 1 & 2 and directed the 3rd respondent/ Insurance Company being insurer of the said lorry to pay a sum of Rs.1,74,500/- 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.7,500/- per month by working as a silk weaver. The appellant suffered fracture of tibia. The appellant examined the doctor as P.W.2, who has assessed the disability of the appellant as 50% and marked the disability certificate as Ex.P7. The Tribunal without considering the same, awarded only a sum of Rs.37,500/- towards loss of income during the treatment period. The Tribunal ought to have fixed the disability of the appellant as 100% and awarded compensation towards loss of future earning capacity. The appellant has taken treatment as in-patient in the hospital for more than 50 days. The Tribunal has not awarded any compensation towards attendant charges, future medical expenses and loss of amenities. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 3rd respondent/Insurance Company contended that the appellant has not produced any document to prove that he suffered functional disability and there is loss of earning capacity. Therefore, the appellant is not entitled to any compensation towards loss of future earning capacity. The Tribunal after considering all the materials available on record, awarded compensation, which is not meagre. The appellant has 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 3rd respondent/ Insurance Company and perused all the materials available on record.

8.It is the contention of the appellant that he suffered fracture of tibia. The appellant examined the doctor as P.W.2, who has assessed the disability of the appellant as 50% and marked the disability certificate as Ex.P7. The Tribunal accepting the same, awarded a sum of Rs.1,00,000/- (Rs.2,000/- X 50%) towards disability at the rate of Rs.2,000/- per percentage

of disability. The appellant has not proved that he suffered functional disability and there is loss of earning capacity. Therefore, the percentage method adopted by the Tribunal is proper. The appellant claimed that he was earning a sum of Rs.7,500/- per month by working as a silk weaver. The appellant marked the salary certificate as Ex.P3 to prove the income. The Tribunal accepting the same, fixed a sum of Rs.7,500/- (Rs.7,500/- X 5) as monthly income of the appellant and awarded a sum of Rs.37,500/- towards loss of income for five months, which is meagre. Due to the injuries, the appellant would not have attended his work atleast for eight months. Therefore, the compensation awarded by the Tribunal towards loss of income during the treatment period is enhanced to Rs.60,000/- (Rs.7,500/- X 8).

8(i).According to the appellant, he has taken treatment as in-patient in the hospital for more than 50 days and skin grafting was done. He marked the discharge summary as Ex.P2 to prove the same. The Tribunal has not awarded any compensation towards attendant charges and loss of amenities. Considering the nature of injuries and period of treatment taken by the appellant, the sum of Rs.20,000/- and Rs.10,000/- are awarded towards attendant charges and loss of amenities respectively. The sum of Rs.5,000/- and Rs.20,000/- awarded by the Tribunal towards extra nourishment and pain & suffering are meagre and hence, the same are hereby enhanced to Rs.30,000/- and Rs.40,000/- respectively. The appellant has not produced any document to prove that he is still taking treatment and therefore, he is not entitled to any compensation towards future medical expenses. 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 during treatment period	37,500	60,000	Enhanced
2.	Transportation	5,000	5,000	Confirmed
3.	Extra nourishment	5,000	30,000	Enhanced
4.	Damage to clothes	2,000	2,000	Confirmed
5.	Medical expenses	5,000	5,000	Confirmed
6.	Pain & suffering	20,000	40,000	Enhanced

7.	Permanent disability	1,00,000	1,00,000	Confirmed
8.	Attendant charges	-	20,000	Granted
9.	Loss of amenities	-	10,000	Granted
	Total	1,74,500	2,72,000	Enhanced by Rs.97,500/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,74,500/- is hereby enhanced to Rs.2,72,000/- 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 3rd 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(CS VIII)

//True Copy//

Sub Assistant Registrar

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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 M/s.M.Malar, Advocate, S.R.No.23916
+1cc to Ms.I.Malar, Advocate, S.R.No.23543

C.M.A.No.3054 of 2013

VBA(CO)
CS/30/12/2020