

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3111 of 2013

Chinnaiya

.. Appellant/Claimant

Vs.

1.Guna

(R1 remained exparte before the Tribunal)

2.The Regional Manager,
United India Insurance Co. Ltd.,
No.46, Katpadi Salai,
Vellore.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.11.2010 made in M.A.C.T.O.P.No.220 of 2006 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Thiruvannamalai.

For Appellant : Mr.F.Terry Chella Raja
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 25.11.2010 made in M.C.O.P.No.220 of 2006 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Thiruvannamalai.

2.The appellant is claimant in M.C.O.P.No.220 of 2006 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Thiruvannamalai. He filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.04.2005.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said motorcycle, to pay a sum of Rs.1,27,647/- as compensation to the appellant.

4. Not being satisfied with the quantum of compensation 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 the appellant has sustained fractures in left maxilla, left frontal bone, left roof of orbit and multiple injuries all over the body. The appellant being an Auto driver, due to the injuries sustained by him, could not continue his work as he was doing earlier. The appellant has proved the same by examining the Doctor as P.W.2, who has assessed the disability of the appellant as 30% and marked the disability certificate as Ex.P15. The Tribunal ought to have adopted multiplier method for awarding compensation towards disability. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Though notice has been served on the 2nd respondent/Insurance Company and its name is printed in the cause list, there is no representation on behalf of them either in person or through counsel.

7. The 1st respondent remained ex-parte before the Tribunal and notice to the 1st respondent is dispensed with.

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

9. It is the contention of the appellant that he sustained fracture in left maxilla, left frontal bone and multiple injuries all over the body. P.W.2/Doctor has assessed the disability of the appellant as 30% and the disability certificate was marked as Ex.P15. The 2nd respondent did not let in any contra evidence to disprove the evidence of P.W.2/Doctor and disability certificate marked as Ex.P15. The Tribunal accepted the disability certificate issued by P.W.2/Doctor and awarded a sum of Rs.70,000/- towards disability. The accident is of the year 2005 and the amount awarded by the Tribunal for 30% disability is not meagre. The appellant has not proved that he suffered functional disability and hence he is not entitled to compensation by adopting multiplier method.

10. According to the appellant, he was aged 30 years at the time of accident and was earning a sum of Rs.6,000/- per month by working as an auto driver. The appellant has not filed any document to substantiate the said contention. In the absence of any material evidence with regard to avocation and income of the appellant, the Tribunal fixed a sum of Rs.4,000/- as monthly income of the appellant and awarded a sum of Rs.24,000/-

(Rs.4,000/- X 6) towards loss of income for a period of six months. The accident is of the year 2005 and the amount awarded by the Tribunal towards loss of income is not meagre. In view of the same, the appellant is not entitled for any enhancement towards loss of income. The appellant has taken treatment as in-patient in Balaji Hosptial, Chennai, from 06.04.2005 to 08.04.2005 for three days and he underwent surgery on 07.04.2005 in the same hospital. The amounts awarded by the Tribunal towards transport expenses, extra nourishment and attendant charges are meagre. Considering the period of treatment and nature of injuries sustained by the appellant, the compensation awarded by the Tribunal towards transport expenses, extra nourishment and attendant charges are enhanced to Rs.5,000/- each respectively. 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	70,000	70,000	Confirmed
2.	Loss of income	24,000	24,000	Confirmed
3.	Transport expenses	2,000	5,000	Enhanced
4.	Extra nourishment	2,000	5,000	Enhanced
5.	Attendant charges	2,000	5,000	Enhanced
6.	Medical bills	17,647	17,647	Confirmed
7.	Pain and sufferings	10,000	10,000	Confirmed
	Total	Rs.1,27,647/-	Rs.1,36,647/-	Enhanced by Rs.9,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,27,647/- is hereby enhanced to Rs.1,36,647/- 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. It is made clear that the appellant shall not be entitled for any

interest for the delay period on the enhanced amount of Rs.9,000/- as per the order of this Court dated 26.08.2013 made in M.P.No.2 of 2013 in C.M.A.SR.No.41741 of 2013. 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.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

mtl

To

1.The Principal Subordinate Judge,
The Motor Accident Claims Tribunal
Thiruvannamalai.

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

+1 CC to M/s.M.Malar, Advocate sr 23913.

C.M.A.No.3111 of 2013

SV(CO)
SP(14/12/2020)

सत्यमेव जयते

WEB COPY