

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3160 of 2013

Ramesh

.. Appellant/Petitioner

Vs.

1.K.Munichandra Reddy

(Remained ex-parte before the Trial Court)

2.Reliance General Insurance Co.Ltd.,

Reliance House, 6th Floor,

No.6, Haddows Road,

Nungambakkam, Chennai-6.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.12.2012 made in M.C.O.P.No.4648 of 2010 on the file of Motor Accident Claims Tribunal, XVII Additional District Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mr.S.Arun Kumar

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 06.12.2012 made in M.C.O.P.No.4648 of 2010 on the file of Motor Accident Claims Tribunal, XVII Additional District Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.4648 of 2010 on the file of Motor Accident Claims Tribunal, XVII Additional District Court, Chennai. He filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.10.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Jeep belonging to the 1st respondent and directed the respondents 1 and 2, being the owner and insurer of the Jeep to jointly and

severally to pay a sum of Rs.9,96,788/- 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 P.W.2/Doctor assessed the disability of the appellant as 80% for the amputation of the right hand and 35% disability for the fracture of Tibia & Fibula and totally the appellant suffered 115% of disability. But the Tribunal reduced the same to 90% without giving any valid reason. The appellant was working as Assistant Circulation Officer in M/s Surya Telugu Daily and was earning a sum of Rs.13,000/- per month and also produced Ex.P10/salary certificate. The Tribunal without considering the salary certificate erroneously fixed a meagre sum of Rs.4,500/- per month as notional income of the appellant and awarded compensation. The appellant sustained fracture in the left leg and his right hand was crushed. The appellant has taken first aid treatment in S.V.R.R.G.Hospital, Thirupathi, and subsequently he took treatment at Government Stanley Hospital, Chennai as inpatient from 01.10.2010 to 09.11.2010 and a surgery was performed on his right leg. Further, he took treatment at B.I.R.R.D as inpatient from 21.12.2010 to 23.01.2011 and from 26.09.2011 to 17.10.2011. Totally, the appellant has taken treatment as inpatient for 93 days and the Tribunal has not awarded any amount towards attendant charges and loss of amenities. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, Mr.S.Arun Kumar, learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal reduced the percentage of disability from 115% to 90% on the ground that assessment of P.W.2/Doctor appears to be very high and the assessment is not in respect of the whole body and awarded compensation towards 90% disability by adopting multiplier method. The appellant has not produced any material evidence to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the appellant and adopted multiplier method for awarding compensation towards 90% disability, which is excessive. Therefore, the appellant is not entitled to any amounts towards attendant charges and loss of amenities. The amounts awarded by the Tribunal under different heads are not meagre 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 and perused the materials available on record.

8.It is the contention of the appellant that he suffered fracture in his left leg and right hand was crushed and artificial hand was fixed. P.W.2/Doctor assessed the disability of the appellant as 80% for the amputation of the right hand and 35% disability for the fracture of Tibia & Fibula, totally the appellant suffered 115% of disability. The Tribunal reduced the percentage of disability to 90% holding that assessment of P.W.2/Doctor appears to be very high and the assessment is not in respect of the whole body and awarded compensation towards 90% disability by adopting multiplier method. The reason given by the Tribunal is proper and the same is confirmed by this Court. The appellant has contended that he was aged 30 years and was working as Assistant Circulation Officer in M/s Surya Telugu Daily and was earning a sum of Rs.13,000/- per month and also produced Ex.P10/salary certificate and he has not examined the author of Ex.P10. The appellant has not filed any other document like wage register, attendance register in support of Ex.P10. Hence, the Tribunal has not accepted Ex.P10/salary certificate. He failed to substantiate the contention that he was earning Rs.13,000/- per month. 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/- per month as notional income of the appellant. The accident is of the year 2010 and the notional income fixed by the Tribunal is meagre. Considering the age of the appellant and year of accident, a sum of Rs.7,500/- per month is fixed as notional income of the appellant. The correct multiplier is 17, but the Tribunal has erroneously applied multiplier 18. In view of the above, the compensation awarded by the Tribunal towards disability is modified to Rs.13,77,000/- (7,500 X 12 X 17 X 90/100).

9.From the award of the Tribunal, it is seen that the appellant sustained fracture in the left leg and his right hand was crushed. The appellant has taken first aid treatment in the S.V.R.R.G.Hospital, Thirupathi, and subsequently he took treatment at Government Stanley Hospital, Chennai as inpatient from 01.10.2010 to 09.11.2010 and surgery was performed on his right leg. Further, he took treatment at B.I.R.R.D as inpatient from 21.12.2010 to 23.01.2011 and from 26.09.2011 to 17.10.2011. Totally, the appellant has taken treatment as inpatient for 93 days and the Tribunal has not awarded any amount towards attendant charges and loss of amenities. The appellant is entitled to a sum of Rs.46,500/- (Rs.500/- X 93 days) towards attendant charges at the rate of Rs.500/- per day and a sum of Rs.25,000/- towards loss of amenities. Considering the nature of injuries sustained by the appellant, meagre sums of Rs.10,000/- each awarded by the Tribunal towards Extra nourishment and

Transportation are enhanced to Rs.25,000/- and Rs.20,000/- respectively. The amounts awarded by the Tribunal under other heads are just and reasonable and 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	8,74,800	13,77,000	Enhanced
2.	Pain and suffering	1,00,000	1,00,000	Confirmed
3.	Extra nourishment	10,000	25,000	Enhanced
4.	Transportation	10,000	20,000	Enhanced
5.	Medical expenses	1,988	1,988	Confirmed
6.	Attendant charges	-	46,500	Granted
7.	Loss of amenities	-	25,000	Granted
	Total	Rs.9,96,788/-	Rs.15,95,488/-	Enhanced by Rs.5,98,700/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,96,788/- is hereby enhanced to Rs.15,95,488/- 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 the necessary Court fee, if any, on the enhanced amount of compensation. The respondents 1 and 2, being the owner and insurer of the Jeep are jointly and severally 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 to the credit of M.C.O.P.No.4648 of 2010 on the file of Motor Accident Claims Tribunal, XVII Additional District Court, Chennai. 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 IV)

//True Copy//

Sub Assistant Registrar

gbi

To

1.Motor Accidents Claims Tribunal,
The XVII Additional District Judge,
Chennai.

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

+1 cc to M/s.K.Varadhakamaraj, Advocate Sr.No. 19430

+1 cc to M/s.S.Arunkumar, Advocate Sr.No. 19806

C.M.A.No.3160 of 2013

MP (CO)

RMP (21/04/2021)