

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.298 OF 2020

Edward Paul Robinson

.. Appellant

Vs.

1.P.Ravi Kumar

2.United India Insurance Co. Ltd.

Motor Third Party Hub
Silingi building, 4th floor
No.134, Greams road
Chennai-600 006.

.. Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.11.2019 made in M.C.O.P.No.4306 of 2015 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

For Appellant : Mr.R.Nalliyappan

For R2 : Mr.D.Bhaskaran

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 08.11.2019 made in M.C.O.P.No.4306 of 2015 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

2.The appellant is claimant in M.C.O.P.No.4306 of 2015 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai. He filed the said claim petition claiming a sum of Rs.12,00,000/- as compensation for the injuries sustained by him in the accident that took place on 23.04.2015.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due

to rash and negligent driving by the 1st respondent, owner-cum-rider of the offending motorcycle and directed the 2nd respondent/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.1,64,900/- 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 the appellant was earning a sum of Rs.27,000/- per month by working as Technical Engineer at Southern Land Global Service, Velacherry, Chennai. In the accident, the appellant sustained fracture of left condyle, right condyle clavicle and distal radius. Due to the injuries, the appellant could not walk or stand freely. P.W.2/Doctor examined and assessed the disability of the appellant as 40% for whole body. The Tribunal without any reason, reduced the disability to 20%. The Tribunal ought to have awarded compensation by adopting multiplier method by fixing the disability of the appellant as 40%. Due to the injuries, marriage prospects is diminished and the Tribunal ought to have awarded compensation for loss of marital prospects. The appellant is still taking treatment and the Tribunal ought to have awarded compensation towards future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. The learned counsel appearing for the 2nd respondent/Insurance Company made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

7. The 1st respondent, owner of the offending motorcycle remained exparte before the Tribunal.

8. Heard the learned counsel appearing for the appellant as well as the 2nd respondent/Insurance Company and perused all the materials available on record.

9. It is the contention of the appellant that he suffered multiple fractures of lower jaw, right & left condyle, left parasymphysis, left shoulder, left clavicle and distal radius. The appellant has examined one Dr. Saravanabavanantham as P.W.2, who assessed the disability of the appellant as 40% and marked Ex.P12/disability certificate to prove the same. The Tribunal reduced the disability to 20% on the ground that P.W.2/Doctor is not the Doctor, who treated the appellant, he has not filed any working sheet & guidelines and the appellant did not subject

himself to assessment for his disability by the duly constituted Medical Board and awarded a sum of Rs.60,000/- (Rs.3,000/- X 20%) towards disability at the rate of Rs.3,000/- 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. But the reason assigned by the Tribunal for reducing the disability of the appellant to 20% is not correct, when there is no contra evidence let in by the 2nd respondent/Insurance Company to disprove the disability certificate and they have not filed any application to refer the appellant before the Medical Board. In view of the above, the appellant is entitled to compensation for 40% disability. This Court by judgment dated 09.01.2020 made in C.M.A.No.4870 of 2020 in the case of M/s.IFFCO TOKIO General Insurance Company Limited vs. Venkatesh and another), fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2015. In view of the same, a sum of Rs.4,000/- is awarded per percentage of disability. Thus, a sum of Rs.1,60,000/- (Rs.4,000/- X 40%) is awarded towards disability.

9(i) Though the appellant claimed compensation towards loss of marital prospects, he has not produced any document to prove that his marital prospect was affected due to the injuries and therefore, he is not entitled to any compensation towards loss of marital prospects. 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. According to the appellant, he has taken treatment as in-patient in the hospital from 23.04.2015 to 30.04.2015 and underwent surgery on 27.04.2015. A sum of Rs.2,400/- awarded by the Tribunal towards attendant charges is meagre. Considering the nature of injuries sustained and period of treatment taken by the appellant, the compensation awarded by the Tribunal towards attendant charges is enhanced to Rs.10,000/-. The sum of Rs.1,000/- and Rs.5,000/- awarded by the Tribunal towards damage to clothes and transportation are meagre and the same are hereby enhanced to Rs.2,000/- and Rs.10,000/- 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	60,000	1,60,000	Enhanced
2.	Medical expenses	36,485	36,485	Confirmed
3.	Loss of income	20,000	20,000	Confirmed
4.	Pain & suffering	15,000	15,000	Confirmed
5.	Transportation	5,000	10,000	Enhanced
6.	Extra nourishment	10,000	10,000	Confirmed
7.	Damage to clothes	1,000	2,000	Enhanced
8.	Attendant charges	2,400	10,000	Enhanced
9.	Loss of amenities	15,000	15,000	Confirmed
	Total	1,64,885 rounded off to 1,64,900	2,78,485 rounded off to 2,78,500	Enhanced by Rs.1,13,600/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,64,900/- is hereby enhanced to Rs.2,78,500/- 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(CCC)

//True Copy//

Sub Assistant Registrar

kj

To

- The IV Judge
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

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

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.11313
+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.11243

C.M.A.No.298 of 2020

SSV(CO)
CS/19/12/2020



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