

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.313 of 2020

S.Adai Kalaraj

.. Appellant/Petitioner

Vs.

1.M.Venkatesh

2.United India Insurance Co. Ltd.,
Motor Third Party Hub,
Silingi Building, 4th Floor,
No.134, Greams Road,
Chennai - 600 006

.. Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.11.2019 made in M.C.O.P.No.2631 of 2014 on the file of the Motor Accident Claims Tribunal, (II Small Causes Court), Chennai.

For Appellant : Mr.R.Nalliyappan
For R2 : Mr.D.Bhaskaran

J U D G M E N T

सत्यमेव जयते

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 04.11.2019 made in M.C.O.P.No.2631 of 2014 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.By consent of both the learned counsel appearing for the appellant and 2nd respondent, the appeal is taken up for final disposal at the stage of admission itself.

3.The appellant is claimant in M.C.O.P.No.2631 of 2014 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. He filed the said claim petition claiming a sum

of Rs.22,00,000/- as compensation for the injuries sustained by him in the accident that took place on 24.03.2014.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider cum owner 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.1,50,200/- as compensation to the appellant.

5.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.

6.The learned counsel appearing for the appellant contended that the appellant was aged 50 years at the time of accident and was earning a sum of Rs.75,000/- per month by doing business. Due to the accident, the appellant sustained fracture of both bone leg, proximal tibia and head of fibula and fracture of shaft of ulna right. Due to the injuries, he could not able to walk, sit or stand freely. Moreover, due to shorting of right leg, the appellant is walking with limping. The appellant has taken treatment as in-patient from 24.03.2014 to 28.03.2014 in Deepam Hospital. The appellant was referred to Medical Board and the Medical Board has assessed the disability of the appellant as 27%, as functional disability for whole body. The Tribunal ought to have adopted multiplier method while awarding compensation towards disability. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not produced any document to prove that he suffered functional disability. In the absence of any documentary evidence to prove that the appellant suffered functional disability, the Tribunal applied multiplier method which is proper. The Tribunal after considering all the materials available on record in proper perspective, has awarded compensation, which is not meagre and prayed for dismissal of the appeal.

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 sustained grievous injuries, fracture over right leg and right hand, severe head injury, contusion over chest and multiple injuries all over the body. The appellant examined himself as P.W.1 and

deposed to that effect. The appellant has taken treatment as in-patient from 24.03.2014 to 28.03.2014 in Deepam Hospital. The appellant was referred to Medical Board and the Medical Board assessed the disability of the appellant as 27%. The disability certificate issued by the Medical Board was marked as Ex.C2. The Tribunal accepting the disability assessed by the Medical Board, awarded a sum of Rs.81,000/- towards disability at the rate of Rs.3,000/- per percentage of disability. The accident is of the year 2014 and the amount awarded by the Tribunal towards disability is not proper. 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 2014. In view of the same, a sum of Rs.4,000/- is awarded per percentage of disability. Therefore, the appellant is entitled to compensation for 27% towards disability at the rate of Rs.4,000/- per percentage. Thus, a sum of Rs.1,08,000/- (27% x Rs.4,000/-) is awarded towards disability. The appellant has not proved that he suffered functional disability and therefore, the percentage method adopted by the Tribunal is correct.

10. According to the appellant, he was aged 50 years at the time of accident and was earning a sum of Rs.75,000/- per month by doing business. To substantiate the said contention, the appellant has produced Ex.P5/Income Tax Return for the year 2013 - 2014 & 2014 - 2015. The accident took place on 24.03.2014, as per Ex.P5 income of the appellant at the time of accident was Rs.25,178/- per month. Hence, the Tribunal accepted Ex.P5/Income Tax Returns and fixed a sum Rs.25,178/- as monthly income of the appellant and awarded a sum of Rs.25,178/- towards loss of income for one month. Considering the nature of injuries, the appellant would not have attended his work atleast for a period of two months. Therefore, a sum of Rs.50,356/- (Rs.25,178/- x 2) is awarded towards loss of income for two months. The amounts awarded by the Tribunal towards extra nourishment, damages to clothes, attendant charges and loss of amenities are meagre. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards extra nourishment, damages to clothes, attendant charges and loss of amenities are enhanced to Rs.10,000/-, Rs.2,000/-, Rs.5,000/- and Rs.10,000/- respectively. The amounts awarded by the Tribunal under 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
1.	Disability	81,000	1,08,000	Enhanced
2.	Pain and suffering	15,000	15,000	Confirmed
3.	Extra nourishment	5,000	10,000	Enhanced
4.	Transport to Hospital	5,000	5,000	Confirmed
5.	Damages to clothes	500	2,000	Enhanced
6.	Attendant charges	1,000	5,000	Enhanced
7.	Medical expenses	7,500	7,500	Confirmed
8.	Future medical expenses	5,000	5,000	Confirmed
9.	Loss of income	25,178	50,356	Enhanced
10.	Loss of amenities	5,000	10,000	Enhanced
	Total	Rs.1,50,178/- is rounded off to Rs.1,50,200/-	Rs.2,17,856/- is rounded off to Rs.2,17,850/-	Enhanced by Rs.67,650/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,50,200/- is hereby enhanced to Rs.2,17,850/- 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.

mtl

Sd/-
Assistant Registrar (CS-VIII)

// True Copy//

Sub Assistant Registrar

To

1.The II Judge,
Motor Accidents Claims Tribunal,
Small Causes Court, Chennai.

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

+ 1 cc to Mr.B. Bhaskaran, Advocate Sr.11855
+ 1 cc to Mr/ R. Nalliyappan, Advocate Sr.11744

RSI (CO)
EU 19.12.2020

C.M.A.No.313 of 2020



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