

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.3499 OF 2013

V.Raju .. Appellant/Petitioner
Vs.

1. E.Kothandam

2. The Royal Sundaram Alliance
Insurance Co. Ltd.,
Sundaram Towers, No.45/46,
Whites Road, Chennai - 600 114.

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the decree and Judgment dated 06.09.2013 made in M.C.O.P.No.1479 of 2012 on the file of Motor Accident Claims Tribunal cum IV Small Causes Court, Chennai.

For Appellant : Mr.D.Sampath

For R1 : No appearance

For R2 : Mr.M.Krishnamoorthy

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai, in the Award dated 06.09.2013 made in M.C.O.P.No.1479 of 2012.

2.The appellant is the claimant in M.C.O.P.No.1479 of 2012 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, 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 21.09.2010.

3. The case of the appellant is that on 21.09.2010 at about 09.30 am., while the appellant was riding the motor cycle bearing Regn.No.TN-57-Q-7898 on the Bangalore High Road, near Thandalam from Pappanchattiram to Sriperumpudur, the lorry bearing Regn.No.TN-21-AC-3177 driven by its driver in a rash and negligent manner, hit the appellant's vehicle, thereby the appellant sustained grievous injuries.

4.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 bearing Regn. No.TN-21-AC-3177, belonging to the first respondent and insured with the second respondent and directed the second respondent to pay a sum of Rs.1,25,900/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.Heard Mr.D.Sampath, learned counsel appearing for the appellant / claimant and Mr.M.Krishnamoorthy, learned counsel appearing for the second respondent.

6.A perusal of the records show that the claimant has sustained injuries fracture of left zygomatico maxillary complex and was treated as inpatient from 21.09.2010 to 27.09.2010 and undergone surgery, thereby open reduction and internal fixation was done. Ex.P3/X-ray Report and Ex.P4/X-ray film and he found difficulty in chewing food and laughing and also disfiguration in face. P.W2 Dr.T.S.Kalkura assessed the disability of the appellant at 45% stating that the appellant had suffered fracture of the left zygomatic maxillary, surgery was performed with implantations, left T.M.joint fibrosis, medline shift to right side, muscular & mastigatory dysfunction and impaired facial expression, Exs.P11 and P12 are the disability certificate and X-ray. P.W.2 has assessed the disability after the lapse of 2 1/2 years. He also admits that the injuries sustained by the appellant is not schedule injury. under such circumstances, the Tribunal has reduced the disability as 35% awarded a sum of Rs.70,000/- (Rs.2,000/- per percentage of disability) towards "disability". Considering the nature of injuries and the year of the accident, this Court is of the view and award a sum of Rs.1,05,000/- (Rs.3,000/- per percentage of disability) for the same. It is seen from the claim petition, at the time of accident the claimant was working as fitter in Auto Tech India Pvt.Ltd., and earning a sum of Rs.15,000/- per month, he has not produced any materials to prove his income. Hence, the Tribunal has awarded a sum of Rs.6,000/- towards "loss of earning", considering the nature of injuries the claimant could not gone his work for a period of more than five months. Hence, this Court is inclined to award a sum of

Rs.30,000/- towards the same. The Tribunal has awarded a sum of Rs.5,000/- towards "Transportation", which is just and reasonable and the same is hereby confirmed. The Tribunal has awarded a sum of Rs.10,000/- towards "Extra Nourishment", which is also just and reasonable and the same is hereby confirmed. The Tribunal has awarded a sum of Rs.9,888/- towards "Medical Expenses", this Court is of the opinion to award a sum of Rs.15,000/- for the same. the Tribunal has awarded a sum of Rs.25,000/- towards "Pain and sufferings" which is very reasonable, hence this Court is not inclined to interfere with the same. The Tribunal has not award any amount towards "Attendant Charges", this Court is inclined to award a sum of Rs.5,000/- for the same. Thus the total compensation of Rs.1,25,900/- awarded by the Tribunal is enhanced as under:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	70,000/-	1,05,000/-	enhanced
2.	Medical Expenses	9,888/-	15,000/-	enhanced
3.	Extra nourishment	10,000/-	10,000/-	confirmed
4.	Transportation	5,000/-	5,000/-	confirmed
5.	Pain and Sufferings	25,000/-	25,000/-	confirmed
6.	Loss of earning	6,000/-	30,000/-	enhanced
6.	Attendant Charges	-----	5,000/-	granted
	Total	Rs.1,25,888/- rounder of by Rs.1,25,900/-	Rs.1,95,000/-	enhanced by Rs.69,100/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.1,25,900/- awarded by the Tribunal is hereby enhanced to Rs.1,95,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent 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/claimant is permitted to withdraw the Award amount along with interest and costs. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sbn

To

1. The Motor Accident Claims Tribunal cum
IV Small Causes Court,
Chennai.
2. The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.M.Selvam, Advocate, S.R.No.16176

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.16372

C.M.A.No.3499 of 2013

VGII(CO)
CS/26/03/2021