

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3501 of 2013

E.Gopinath

.. Appellant

Vs.

Chief Workshop Manager
Loco Works, Southern Railway
Chennai-600 023.

.. Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.09.2012 made in M.C.O.P.No.1090 of 2009 on the file of Motor Accident Claims Tribunal, XVIII Additional Court, Chennai.

For Appellant : Mr.K.V.Muthuvisakan

For Respondent : Mr.M.Vijay Anand

J U D G M E N T

The matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 11.09.2012 made in M.C.O.P.No.1090 of 2009 on the file of Motor Accident Claims Tribunal, XVIII Additional Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.1090 of 2009 on the file of Motor Accident Claims Tribunal, XVIII Additional 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 21.02.2009.

3.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 car belonging to the respondent and directed the respondent to pay a sum of Rs.1,17,000/- 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 in the accident, the appellant has sustained head injury, deep laceration on the right leg, Grade I compound in both bone fracture in right leg, injuries in chest, right leg ankle and multiple injuries all over the body. To prove the nature of injuries, the appellant examined himself as P.W.1 and examined Doctor as P.W.2. P.W.2/Doctor examined the appellant and assessed that the appellant suffered 40% disability. The Tribunal has awarded only meagre amount as compensation towards disability. The amounts awarded by the Tribunal towards loss of income, transportation, extra nourishment, medical expenses, pain and suffering, disability and loss of earning power are meagre. The Tribunal failed to award any amount towards attendant charges, loss of amenities and damage to clothes and articles and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the respondent contended that the Tribunal considering the nature of injuries, disability, evidence of P.W.1 and P.W.2/Doctor, awarded compensation under different heads, which are not meagre. The appellant has not made out any case for enhancement of compensation 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 respondent and perused the entire materials on record.

8. It is the contention of the appellant that in the accident, he has sustained fracture in both legs and multiple injuries all over the body. He took treatment in K.M.C. Hospital as in-patient from 21.02.2009 to 14.03.2009 for 22 days and underwent surgery. To prove the injuries, the appellant examined P.W.2/Doctor, who has deposed about the nature of injuries and treatment taken by the appellant. P.W.2 further deposed that after surgery, fracture was mal-united and appellant could not walk and stand, due to pain and swelling. P.W.2 also deposed that the appellant cannot work by standing. P.W.2 examined the appellant and certified that the appellant suffered 40% disability. The respondent has not let in any contra evidence to disprove the evidence of P.W.2/Doctor. The Tribunal without giving any finding with regard to disability and treatment taken by the appellant, awarded a sum of Rs.50,000/- towards disability and compensation under different heads. There is no contra evidence to the evidence of P.W.2/Doctor and assessment of 40% disability. In view of the same, the amounts awarded by the Tribunal towards disability and other heads are not proper.

The appellant is entitled to compensation for 40% disability. The accident has occurred on 21.02.2009 and hence, the appellant is entitled to a sum of Rs.3,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,20,000/- (Rs.3,000/- X 40%).

8(i). According to the appellant, he was working as a collection agent in City Bank and was earning a sum of Rs.7,500/- per month. The appellant failed to prove the said contention. In the absence of any material evidence, the Tribunal awarded a sum of Rs.5,000/- towards loss of income for 20 days. The accident is of the year 2009 and hence, a sum of Rs.6,500/- per month is fixed as notional income of the appellant. Due to the injuries, the appellant would not have worked atleast for a period of six months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.39,000/- (Rs.6,500/- X 6).

8(ii) The appellant has taken treatment in K.M.C. Hospital as in-patient from 21.02.2009 to 14.03.2009 for 22 days. The Tribunal has not awarded any amount towards attendant charges, loss of amenities and damage to clothes and articles. Considering the nature of injuries, disability suffered and period of treatment taken by the appellant, Rs.15,000/-, Rs.15,000/- and Rs.1,000/- are awarded towards attendant charges, loss of amenities and damage to clothes and articles respectively. The amounts awarded by the Tribunal towards transportation, extra nourishment, medical expenses and pain and suffering are meagre and hence, the same are hereby enhanced to Rs.10,000/-, Rs.10,000/-, Rs.15,000/- and Rs.15,000/- respectively. A sum of Rs.30,000/- awarded by the Tribunal towards loss of earning power is just and reasonable and hence, the same is 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.	Loss of earning for 20 days	5,000	39,000	Enhanced
2.	Transportation	7,000	10,000	Enhanced
3.	Extra nourishment	5,000	10,000	Enhanced
4.	Medical expenses	10,000	15,000	Enhanced

5.	Pain and suffering	10,000	15,000	Enhanced
6.	Permanent disability	50,000	1,20,000	Enhanced
7.	Loss of earning power	30,000	30,000	Confirmed
8.	Attendant charges	-	15,000	Granted
9.	Loss of amenities	-	15,000	Granted
10.	Damage to clothes and articles	-	1,000	Granted
	Total	1,17,000	2,70,000	Enhanced by Rs.1,53,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,17,000/- is hereby enhanced to Rs.2,70,000/- 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 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 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 (CO)

//True Copy//

Sub Assistant Registrar

kj

To

1.XVIII Additional District Judge
The Motor Accident Claims Tribunal
Chennai.

Copy to :
The Section Officer
V.R.Section
High Court, Chennai.

+1 cc to Mr.k.V.Muthu Visakan, Advocate Sr.No. 34239
+1 cc to Mr. M.Vijay Anand, Advocate Sr.No. 33969

C.M.A.No.3501 of 2013

SS (CO)
RMP (07/05/2021)



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