

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3718 of 2013

S.Balaji .. Appellant/Claimant

Vs.

1.M.R.Anantha Jayanan

2.United India Insurance Company Limited,
No.19, Andiappa Gramani Street,
Royapuram,
Chennai - 600 013.

..Respondents/Respondents

(R1 remained exparte in the Trial Court.
Hence notice to R1 dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.07.2013 made in M.C.O.P.No.2948 of 2007 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Chennai.

For Appellant : Ms.A.Subadra
for Ms.M.Malar
For R2 : Mr.A.Dhiraviyanathan

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 29.07.2013 made in M.C.O.P.No.2948 of 2007 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Chennai.

3.The appellant is the claimant in M.C.O.P.No.2948 of 2007 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Chennai. He filed the above said claim petition, claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.04.2006.

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 belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the lorry to pay a sum of Rs.1,03,950/- as compensation to the appellant at the first instance and recover the same from the 1st respondent-owner of the lorry.

5. Not being satisfied with the amounts 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 suffered fracture on the right leg and injuries all over his body. To prove the same, the appellant examined himself as P.W.1 and Dr.Saichandran as P.W.2 and marked documents and proved the nature of injuries and disability suffered by him. P.W.2/Doctor examined the appellant and certified that appellant suffered 45% disability and issued Ex.P6/disability certificate to that effect. The Tribunal erroneously reduced the percentage of disability to 30% and awarded meagre amount as compensation towards disability. At the time of accident, the appellant was working as Hoarding Labour and was earning a sum of Rs.10,000/- per month. The Tribunal erroneously fixed a meagre sum of Rs.4,500/- per month as notional income of the appellant and awarded compensation towards loss of income for four months. Due to the injuries, the appellant suffered permanent disability and lost his earning capacity. The appellant has taken treatment as in-patient in the Hospital from 01.04.2006 to 01.05.2006. 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 Tribunal considering the evidence of P.W.2/Doctor and nature of injuries, held that percentage of disability assessed by P.W.2/Doctor is on the higher side and rightly reduced the same to 30% and awarded compensation for 30% disability. The appellant has not proved that he requires future medical treatment by acceptable evidence and hence, he is not entitled to any enhancement as claimed by him. The amounts awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement and prayed for dismissal of the appeal.

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

9. It is the contention of the appellant that he was working as Hoarding Labour and was earning a sum of Rs.10,000/- per

month. Except oral evidence, the appellant has not produced any material evidence to substantiate the same. The respondents have not denied that appellant was working as Hoarding Labour and was earning a sum of Rs.10,000/- per month. The Tribunal in the absence of any material evidence with regard to income of the appellant, fixed a sum of Rs.4,500/- per month as notional income of the appellant. The accident occurred in the year 2006 and the monthly income fixed by the Tribunal is meagre. A sum of Rs.6,500/- per month is fixed as notional income of the appellant. The Tribunal has awarded a sum of Rs.18,000/- towards loss of income for four months at the rate of Rs.4,500/- per month. Considering the nature of injuries and disability, 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 enhanced to Rs.39,000/- [Rs.6,500/- X 6 months] at the rate of Rs.6,500/- per month for six months.

10.P.W.2/Doctor examined on behalf of the appellant deposed about the nature of injuries, treatment taken and certified that appellant suffered 45% disability and issued Ex.P7/disability certificate to that effect. The 2nd respondent-Insurance Company has not let in any contra evidence to disprove the evidence of P.W.2/Doctor and Ex.P7/disability certificate. The Tribunal reduced the percentage of disability to 30% on the ground that disability assessed by P.W.2/Doctor is on the higher side. The reason given by the Tribunal for reducing the percentage of disability is erroneous. The appellant is entitled to compensation for 45% disability. The accident occurred in the year 2006 and a sum of Rs.2,000/- per percentage of disability awarded by the Tribunal is proper. Thus, the appellant is entitled to a sum of Rs.90,000/- towards disability [Rs.2,000/- X 45% of disability] at the rate of Rs.2,000/- per percentage of disability. The appellant claimed a sum of Rs.25,000/- towards future medical expenses by producing Ex.P5/future medical expenses. The Tribunal rejected the same on the ground that appellant has not examined the author of Ex.P5 and did not grant any compensation towards future medical expenses. Considering the nature of injuries, the appellant is entitled to a sum of Rs.5,000/- towards future medical expenses. The appellant has taken treatment as in-patient from 01.04.2006 to 01.05.2006 and the Tribunal has not awarded any amount towards attendant charges. Therefore, a sum of Rs.10,000/- is awarded towards attendant charges. Considering the nature of injuries and period of treatment taken by the appellant, the amount awarded by the Tribunal towards extra nourishment is meagre and the same is enhanced to Rs.10,000/-. The Tribunal has not awarded any amount towards transportation. The appellant would have spent some amount towards transportation. Hence, a sum of Rs.5,000/- is awarded towards transportation. The amounts awarded by the Tribunal towards pain and sufferings and medical expenses are

just and reasonable and hence, the same are 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	60,000/-	90,000/-	Enhanced
2.	Loss of income	18,000/-	39,000/-	Enhanced
3.	Pain and sufferings	20,000/-	20,000/-	Confirmed
4	Extra nourishment	5,000/-	10,000/-	Enhanced
5.	Medical expenses	950/-	950/-	Confirmed
6.	Attendant charges	-	10,000/-	Granted
7.	Transportation	-	5,000/-	Granted
8.	Future medical expenses	-	5,000/-	Granted
	Total	Rs.1,03,950/-	Rs.1,79,950/-	enhanced by Rs.76,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,03,950/- is hereby enhanced to Rs.1,79,950/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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 to the credit of M.C.O.P.No.2948 of 2007 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Chennai at the first instance and then recover the same from the 1st respondent-owner of the lorry. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Special Subordinate Judge No.I,
Motor Accident Claims Tribunal,
Chennai.

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

+1 cc to M/s.M.Malar, Advocate Sr.No. 34560

C.M.A.No.3718 of 2013

CP(CO)
RMP(06/05/2021)