



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.607 of 2013

K.M.Santhosh Kumar

... Appellant/Petitioner

Vs.

1.Bertram Frederick Swaris

(R1 was set exparte before the Tribunal)

2.Royal Sundaram Alliance Insurance Co. Ltd.

Nos.45 and 46, Whites road

Chennai-600 014.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.10.2011 made in M.C.O.P.No.4771 of 2009 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant: Mr.C.Munusamy for
M/s.C and K Law firm

For R2 : Mr.M.Krishnamoorthy

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 31.10.2011 made in M.C.O.P.No.4771 of 2009 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.4771 of 2009 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 17.12.2009.



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 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.4,47,250/- 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 suffered fracture of both bones in the left leg, left acromio-clavicular joint dislocation, nasal bone fracture and multiple injuries all over the body. The appellant has taken treatment as in-patient in Malar Hospital from 17.12.2009 to 25.12.2009, underwent surgery and in Helios Hospital as in-patient on 08.02.2010 for one day. P.W.2/Doctor examined the appellant and assessed 70% as partial and permanent disability. The Tribunal reduced the disability to 60% and awarded lesser compensation towards disability. Due to the injuries, the appellant could not do the work as he was doing earlier. The Tribunal ought to have adopted multiplier method to award compensation towards loss of earning power. The appellant is still taking treatment for the injuries 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.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not proved that he suffered functional disability and lost his earning power and therefore, the Tribunal rightly awarded compensation by adopting percentage method. The Tribunal after considering the materials available on record in proper perspective, has 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.

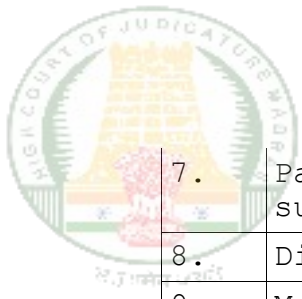
7.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and perused the entire materials on record.

8.It is the contention of the appellant that in the accident, he suffered fracture of both bones in the left leg, nasal bone fracture and multiple injuries all over the body. The appellant has taken treatment as in-patient in Malar Hospital



from 17.12.2009 to 25.12.2009, underwent surgery and in Helios Hospital as in-patient on 08.02.2010 for one day. The appellant has marked the medical records as Exs.P1 to P6 to prove the nature of injuries and treatment taken by him. P.W.2/Doctor examined the appellant and assessed 70% disability. The Tribunal reduced the disability to 60% on the ground that x-ray report was not filed, the disability assessed by P.W.2/Doctor is on the higher side and awarded a sum of Rs.1,20,000/- towards disability at the rate of Rs.2,000/- per percentage of disability. The respondents did not let in any contra evidence to disprove the evidence of P.W.2/Doctor. Therefore, the appellant is entitled to compensation for 70% disability. The appellant has not proved that he suffered functional disability and lost his earning power and therefore, the appellant is not entitled to compensation by adopting multiplier method. The accident is of the year 2009 and hence, a sum of Rs.3,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.2,10,000/- (Rs.3,000/- X 70%). 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. Considering the nature of injuries, disability and period of treatment taken by the appellant, the Tribunal awarded compensation under other heads, which are not meagre and hence, the appellant is not entitled to any enhancement of compensation under other heads. 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 income for two months	54,000	54,000	Confirmed
2.	Transportation	5,000	5,000	Confirmed
3.	Extra nourishment	5,000	5,000	Confirmed
4.	Damage to clothes	1,000	1,000	Confirmed
5.	Medical expenses	2,27,250	2,27,250	Confirmed
6.	Attendant charges	10,000	10,000	Confirmed



7.	Pain and suffering	15,000	15,000	Confirmed
8.	Disability	1,20,000	2,10,000	Enhanced
9.	Mental agony and loss of amenities	10,000	10,000	Confirmed
	Total	4,47,250	5,37,250	Enhanced by Rs.90,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,47,250/- is hereby enhanced to Rs.5,37,250/- 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 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(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The III Judge,
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

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

C.M.A.No.607 of 2013

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srg 19/08/2021