

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.704 of 2013

S.Jagadeesh

... Appellant/Claimant

Vs.

1.M/s.Tecpro Systems Limited
New No.12, Old No.124/A
L.B.Road, Adyar, Chennai-600 020.
(R1 remained exparte before the Tribunal)

2.The New India Assurance Company Ltd.
No.45, Second Line Beach
Moores Road, Parrys, Chennai-600 001. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.07.2012 made in M.A.C.T.O.P.No.1956 of 2011 on the file of Motor Accident Claims Tribunal, XVII Additional Court, City Civil Court, Chennai.

For Appellant : Mr.F.Terry Chellaraja

For R2 : Ms.Saroja Devi T. for Mr.N.Anand

R1 : Exparte

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 24.07.2012 made in M.C.O.P.No.1956 of 2011 on the file of Motor Accident Claims Tribunal, XVII Additional Court, City Civil Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.1956 of 2011 on the file of Motor Accident Claims Tribunal, XVII Additional Court, City Civil Court, Chennai. He filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for

the injuries sustained by him in the accident that took place on 21.04.2011.

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 both the 1st respondent as well as the 2nd respondent/Insurance Company being insurer of the said car to jointly and severally pay a sum of Rs.3,67,000/- 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 at the time of accident, the appellant was earning a sum of Rs.8,000/- per month by working as a tailor. The Tribunal without considering the same, fixed only a meagre sum of Rs.4,500/- as monthly income of the appellant. The appellant suffered fracture of skull and multiple injuries all over the body. The appellant examined the doctor as P.W.2, who has assessed the disability of the appellant as 45% in respect of head injuries and 20% in respect of left ear scar drum and marked the disability certificate as Ex.P7. The Tribunal without assigning any reason, reduced the disability to 40% and awarded only a sum of Rs.80,000/- towards disability at the rate of Rs.2,000/- per percentage of 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 Tribunal has not awarded any compensation towards attendant charges, future medical expenses, damage to clothes and loss of amenities. 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 produced any document to prove that he was earning a sum of Rs.8,000/- per month by working as a tailor. In the absence of any material evidence to prove the income of the appellant, the Tribunal fixed a sum of Rs.4,500/- as monthly income of the appellant and the same is not meagre. The appellant has not proved that he suffered functional disability and there is loss of earning capacity and therefore, the percentage method adopted by the Tribunal while awarding compensation towards disability is proper. 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/Insurance Company and perused all the materials available on record.

8. It is the contention of the appellant that in the accident, he suffered fracture on his skull, blood vessels to the brain was damaged and sustained multiple injuries all over the body. The appellant examined the doctor as P.W.2, who has assessed the disability of the appellant as 45% in respect of head injuries and 20% in respect of left ear scar drum and marked the disability certificate as Ex.P7. The Tribunal reduced the disability from 65% to 40% on the ground that P.W.2/Doctor has not stated that due to the injury in the ear, the appellant has lost his hearing capacity and awarded a sum of Rs.80,000/- (Rs.2,000/- X 40%) towards disability at the rate of Rs.2,000/- per percentage of disability. The respondents did not let in any oral and documentary evidence to disprove the disability assessed by P.W.2/Doctor and disability certificate marked as Ex.P7. Therefore, the appellant is entitled to compensation for 65% disability, as there is no contra evidence. The appellant has not proved that he suffered functional disability and there is loss of earning capacity and therefore, the percentage method adopted by the Tribunal while awarding compensation towards disability is proper. But the amount awarded by the Tribunal per percentage of disability is meagre. The accident is of the year 2011 and hence, a sum of Rs.3,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,95,000/- (Rs.3,000/- X 65%).

8(i).The appellant has contended that at the time of accident, he was earning a sum of Rs.8,000/- per month by doing tailoring work. The appellant failed to prove the said contention. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.4,500/- as monthly income of the appellant and awarded a sum of Rs.9,000/- (Rs.4,500/- X 2) towards loss of income for two months. The accident is of the year 2011 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.8,000/- is fixed as monthly income of the appellant. Due to the injuries, the appellant would not have attended his work atleast for five months. Thus, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.40,000/- (Rs.8,000/- X 5).

8(ii).According to the appellant, he has taken treatment as in-patient in the Global hospital, Perumbakkam, Chennai, from

22.04.2011 to 06.05.2011, underwent surgery and the discharge summary was marked as Ex.P3 to prove the same. The Tribunal has not awarded any compensation towards attendant charges, loss of amenities and damage to clothes. Considering the nature of injuries and period of treatment taken by the appellant, Rs.15,000/-, Rs.25,000/- and Rs.1,000/- are awarded towards attendant charges, loss of amenities and damage to clothes respectively. The sum of Rs.5,000/- and Rs.3,000/- awarded by the Tribunal towards extra nourishment and transportation are meagre and hence, the same are hereby enhanced to Rs.15,000/- and Rs.10,000/- respectively. 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. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed.

9.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation, more than the amount claimed by the claimants. 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.	Medical expenses	2,50,000	2,50,000	Confirmed
2.	Disability	80,000	1,95,000	Enhanced
3.	Pain and suffering	20,000	20,000	Confirmed
4.	Extra nourishment	5,000	15,000	Enhanced
5.	Transportation	3,000	10,000	Enhanced
6.	Loss of income	9,000	40,000	Enhanced
7.	Attendant charges	-	15,000	Granted
8.	Loss of amenities	-	25,000	Granted
9.	Damage to clothes	-	1,000	Granted

	Total	3,67,000	5,71,000	Enhanced by Rs.2,04,000 /-
--	-------	----------	----------	----------------------------------

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.3,67,000/- is hereby enhanced to Rs.5,71,000/- 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. Both the respondents are directed to jointly and severally 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

//True Copy//

Sub Assistant Registrar

To

The XVII Additional Judge,
The Motor Accident Claims Tribunal,
City Civil Court, Chennai.

Copy to

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

+1cc to Ms.M.Malar, Advocate Sr.22932

C.M.A.No.704 of 2013

ssi[col]
srg 20/10/2020