

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.01.2020
CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2846 of 2016

S.Rameshbabu

.. Appellant/Petitioner

Vs.

1.Rama

2.ICICI Lombard General Insurance Co. Ltd.,
No.140, Chottabhai Centre,
2nd & 3rd Floor,
Nungambakkam,
Chennai - 600 034.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.06.2016 made in M.C.O.P.No.1811 of 2013 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.K.V.Muthu Visakan
For R2 : Mr.K.K.Ramakrishnan
For R1 : Ex-parte

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 16.06.2016 made in M.C.O.P.No.1811 of 2013 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

2.The appellant is claimant in M.C.O.P.No.1811 of 2013 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, 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 20.11.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.1,80,300/- as compensation to the appellant.

4. Not being satisfied with the quantum of compensation 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/claimant contended that the appellant was aged 45 years at the time of accident and was earning a sum of Rs.20,000/- per month by working as a Head Constable in ADGP, Economic Office Wing, Annanagar, Chennai. PW2/Doctor has assessed the disability of the appellant as 45%. The Tribunal reduced the disability to 35% holding that P.W.2/Doctor has not filed any worksheet and guidelines for assessing disability. The appellant has sustained severe head injury, injury in right hand, fracture coronoid process ulna, head of radius in right hand, dislocation of right elbow, orif done and multiple injuries all over the body. Due to the injuries sustained by the appellant, he could not do the work as he was doing earlier. The Tribunal has not awarded any compensation towards loss of earning power. 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 though PW2/Doctor has assessed the disability of the appellant as 45%, to substantiate the same, he has not filed any worksheet and guidelines. Therefore, the Tribunal has rightly fixed the disability of the appellant as 35%. The Tribunal after considering all the materials available on record, has awarded just compensation, which is 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/Insurance Company and perused all the materials available on record.

8. It is the contention of the appellant that he has sustained severe head injury and multiple injuries all over the body. The appellant examined one Dr.K.J.Mathiazhagan as P.W.2, who assessed the disability of the appellant as 45% and marked Ex.P3/C.T.Report - Right Elbow, Ex.P9/Old X-ray, Ex.P10/X-ray and Ex.P11/disability certificate. The Tribunal reduced the disability to 35% holding that P.W.2/Doctor has not assessed the disability of the appellant to the whole body and he has not produced any working sheet and guidelines for this assessment. The reason given by the Tribunal for reducing the disability is correct. The accident is of the year 2012 and the amount awarded by the Tribunal per percentage of disability is proper. The Tribunal has awarded a sum of Rs.1,05,000/- by awarding a sum of

Rs.3,000/- per percentage of disability and the same is confirmed. Therefore, the appellant is not entitled to enhancement towards disability.

9. According to the appellant, he was aged 45 years at the time of accident and was earning a sum of Rs.20,000/- per month by working as a Head Constable in ADGP, Economic Office Wing, Annanagar, Chennai. To substantiate the said contention, he marked Ex.P7/pay slip for the month of December 2012. The Tribunal has not awarded any compensation towards loss of income by giving valid reason that the appellant was on medical leave and has not suffered any loss of income. The appellant has taken treatment as in-patient in Miot Hospital, Chennai from 22.11.2012 to 03.12.2012. The amounts awarded by the Tribunal towards pain & sufferings, extra nourishment, transport to hospital, damages to clothes, attendant charges, future medical expenses and loss of amenities are meagre. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.50,000/-, Rs.25,000/-, Rs.10,000/-, Rs.2,000/-, Rs.20,000/-, Rs.10,000/- and Rs.15,000/- are enhanced towards pain & sufferings, extra nourishment, transport to hospital, damages to clothes, attendant charges, future medical expenses and loss of amenities. The amount awarded by the Tribunal towards medical expenses 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.	Disability	1,05,000	1,05,000	Confirmed
2.	Pain & suffering	35,000	50,000	Enhanced
3.	Extra nourishment	5,000	25,000	Enhanced
4.	Transport to hospital	5,000	10,000	Enhanced
5.	Damages to clothes	1,000	2,000	Enhanced
6.	Attender charges	3,000	20,000	Enhanced
7.	Medical expenses	16,260	16,260	Confirmed

8.	Future medical expenses	5,000	10,000	Enhanced
9.	Loss of amenities	5,000	15,000	Enhanced
	Total	Rs.1,80,260/- is rounded off to Rs.1,80,300/-	Rs.2,53,260/- is rounded off to Rs.2,53,300/-	Enhanced by Rs.73,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,80,300/- is hereby enhanced to Rs.2,53,300/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. 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. On such deposit, the appellant/claimant 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

mtl

To

- The IV Judge,
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

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

C.M.A.No.2846 of 2016

AD(CO)
CSR 20.04.2021