

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2849 of 2016

Nagamani

.. Appellant/Petitioner

Vs.

1.G.Rasathi

2.Royal Sundaram Alliance Insurance Co. Ltd.
Subramaniam buildings, 1st floor
No.1, club house road
Anna salai, Chennai-2.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.07.2016 made in M.C.O.P.No.4080 of 2013 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

For Appellant : Mr.K.Varadha Kamaraj
For R2 : No appearance

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 22.07.2016 made in M.C.O.P.No.4080 of 2013 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

2.The appellant is claimant in M.C.O.P.No.4080 of 2013 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, 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 11.05.2013.

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 Xylo 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.80,000/- as compensation to the appellant at the first instance and recover the same from the 1st respondent, as the driver of the car belonging to the 1st respondent did not possess any badge to driver the car.

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 the appellant sustained fracture of distal radius bone on the right radius. He examined the doctor as P.W.2, who has assessed the disability of the appellant as 30% and marked the disability certificate as Ex.P12 to prove the injuries. The Tribunal without any reason reduced the disability to 10% and awarded only a sum of Rs.30,000/- towards disability. The appellant was working as a hospitality manager in Polaris company, Navalur and was earning a sum of Rs.21,000/- per month. The appellant has marked the loss of pay certificate as Ex.P9 to prove that he lost income during the treatment period. The Tribunal without considering the same, awarded only a sum of Rs.6,500/- towards loss of income for one month. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Though notice has been served on the 2nd respondent/Insurance Company and its name is printed in the cause list, there is no representation on behalf of the 2nd respondent either in person or through counsel.

7. Heard the learned counsel appearing for the appellant and perused all the materials available on record.

8. It is the contention of the appellant that he sustained fracture of distal radius bone on the right radius. He examined the doctor as P.W.2, who has assessed the disability of the appellant as 30% and marked the disability certificate as Ex.P12 to prove the injuries. The Tribunal reduced the disability to 10% on the ground that the disability assessed by P.W.2/Doctor is not for whole body of the appellant and awarded a sum of Rs.30,000/- towards disability at the rate of Rs.3,000/- per percentage of disability. The reason assigned by the Tribunal for reducing the percentage of disability is not correct. The respondents did not let in any oral and documentary evidence to disprove the disability assessed by P.W.2/Doctor and the disability certificate marked as Ex.P12. Therefore, the appellant is entitled to compensation for 30% disability, as there is no contra evidence. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.90,000/- (Rs.3,000/- X 30%).

8(i). According to the appellant, he was working as a hospitality manager in Polaris company, Navalur and was earning a sum of Rs.21,000/- per month at the time of accident. He has

taken treatment as in-patient in SRM hospital, Chennai, from 11.05.2013 to 30.05.2013 and he lost his income during the treatment period. The appellant has marked the discharge summary as Ex.P3 and the loss of pay certificate as Ex.P9 to show that he lost income for three months. The Tribunal rejected Ex.P9 on the ground that author of Ex.P9 was not examined, fixed a sum of Rs.6,500/- as monthly income of the appellant and awarded a sum of Rs.6,500/- towards loss of income for one month. The accident is of the year 2013 and the monthly income fixed by the Tribunal is meagre. The appellant failed to prove that he was earning a sum of Rs.21,000/- per month. Hence, a sum of Rs.12,000/- is fixed as monthly income of the appellant. As per Ex.P9/loss of pay certificate, the appellant lost his income for three months. Thus, a sum of Rs.36,000/- (Rs.12,000/- X 3) is awarded towards loss of income for three months. The sum of Rs.10,000/-, Rs.2,000/-, Rs.2,000/-, Rs.750/-, Rs.4,000/- and Rs.2,500/- awarded by the Tribunal towards pain & suffering, extra nourishment, transportation, damage to clothes, attendant charges and loss of amenities respectively are meagre. Considering the nature of injuries and period of treatment taken by the appellant, the compensation awarded by the Tribunal towards pain & suffering, extra nourishment, transportation, damage to clothes, attendant charges and loss of amenities are hereby enhanced to Rs.20,000/-, Rs.20,000/-, Rs.10,000/-, Rs.2,000/-, Rs.15,000/- and Rs.15,000/- respectively. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are 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	30,000	90,000	Enhanced
2.	Pain & suffering	10,000	20,000	Enhanced
3.	Extra nourishment	2,000	20,000	Enhanced
4.	Transportation	2,000	10,000	Enhanced
5.	Damage to clothes	750	2,000	Enhanced
6.	Attendant charges	4,000	15,000	Enhanced

7.	Medical expenses	19,837	19,837	Confirmed
8.	Future medical expenses	2,500	2,500	Confirmed
9.	Loss of income	6,500	36,000	Enhanced
10.	Loss of amenities	2,500	15,000	Enhanced
	Total	80,087 rounded off to 80,000	2,30,337 rounded off to 2,30,300	Enhanced by Rs.1,50,300/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.80,000/- is hereby enhanced to Rs.2,30,300/- 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/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 at the first instance and recover the same from the 1st respondent. 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 V)

//True Copy//

Sub Assistant Registrar

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To

1. The IV Judge

The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

2. The Section Officer

V.R. Section
High Court, Chennai.

+1 cc to M/s.K.Varadha kamaraj, Advocate Sr.No. 17838

C.M.A.No.2849 of 2016

BP (CO)

RMP (06/05/2021)