

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1761 of 2018

M.Dhanasekaran

.. Appellant

Vs.

1. Jayalakshmi
2. The Manager,
New India Assurance Company Limited,
Motor Third Party Claim, 45, Moore Street,
V Floor, Chennai 600 001. .. Respondents
(1st respondent remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.09.2016 made in M.C.O.P.No.2396 of 2014 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellants : Ms.A.Subadra
For R2 : No appearance

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 20.09.2016 made in M.C.O.P.No.2396 of 2014 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.2396 of 2014 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, 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 22.03.2014.

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 to pay a sum of Rs.1,96,300/- 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 the appellant suffered fracture in the right leg both bone, D/3 and Plate screws and both bone muscle flap were fixed. Due to the fracture, he could not continue his work as he was doing earlier. The appellant examined P.W.2/Doctor to prove the nature of injuries and disability suffered by him. The Tribunal ought to have applied multiplier method and granted compensation. The Tribunal erroneously reduced the percentage of disability from 65% to 35% and awarded a meagre sum of Rs.1,05,000/- towards disability. The appellant was working as a driver and was earning a sum of Rs.15,000/- per month. The Tribunal without considering the driving licence/Ex.P7 of the appellant, fixed a sum of Rs.6,500/- as notional income of the appellant per month and awarded a meagre sum of Rs.19,500/- (Rs.6,500/- x 3 months) towards loss of income. The Tribunal has failed to award any amount under the heads of mental agony and disfigurement. The compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Though notice was served on the 2nd respondent-Insurance Company and their name is printed in the cause list, there is no representation on behalf of them either in person or through counsel.

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

8.From the materials available on record, it is seen that the appellant has contended that he suffered fracture in the right leg both bone, D/3 and Plate screws and both bone muscle flap were fixed. To substantiate the injuries sustained by him, the appellant has examined P.W.2/Doctor, who deposed about the nature of injuries and treatment taken by the appellant and assessed disability as 65%. But the Tribunal reduced the disability to 35% and awarded Rs.1,05,000/- towards disability at the rate of Rs.3,000/- per percentage, on the ground that the disability assessed by the Doctor was not for the whole body. The said reasoning is erroneous. Considering the nature of injuries, evidence of P.W.2/Doctor and materials on record, the appellant is entitled to compensation for 65% disability at the rate of Rs.3,000/- per percentage. Thus, a sum of Rs.1,95,000/- (Rs.3,000/- x 65) is awarded towards disability at the rate of Rs.3,000/- per percentage for 65% disability. The appellant has not proved that he suffered functional disability. In the absence of any material evidence to substantiate the said contention, he is not entitled to compensation by applying multiplier method. The appellant contended that he was working as a driver and was earning a sum of Rs.15,000/- per month. The

appellant did not file any document to prove the same. Hence, the Tribunal fixed a sum of Rs.6,500/- as monthly income of the appellant and awarded a sum of Rs.19,500/- towards loss of income for a period of three months. The accident is of the year 2014 and the monthly income fixed by the Tribunal is meagre. A sum of Rs.9,000/- is fixed as monthly income of the appellant. Due to the injuries, the appellant would not have attended work atleast for nine months. Hence, a sum of Rs.81,000/- (Rs.9,000/- x 9months) is awarded towards loss of income. The appellant has taken treatment in the hospital as in-patient in Government Royapettah Hospital from 22.03.2014 to 06.06.2014. The amounts awarded by the Tribunal for attendant charges and extra nourishment are meagre. Considering the nature of injuries and period of treatment, the amounts awarded by the Tribunal are hereby enhanced to Rs.50,000/- towards extra nourishment and Rs.75,000/- towards attendant charges. The amounts granted by the Tribunal under the other heads are just and reasonable and hence, they 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
1.	Disability	1,05,000/-	1,95,000/-	enhanced
2.	Pain and sufferings	30,000/-	30,000/-	confirmed
3.	Extra nourishment	3,000/-	50,000/-	enhanced
4.	Transportation	5,000/-	5,000/-	confirmed
5.	Damage to clothes	750/-	750/-	confirmed
6.	Attendant charges	15,000/-	75,000/-	enhanced
7.	Medical expenses	7,500/-	7,500/-	confirmed
8.	Future medical expenses	7,500/-	7,500/-	confirmed
9.	Loss of income	19,500/-	81,000/-	enhanced
10.	Loss of amenities	3,000/-	3,000/-	confirmed
	Total	Rs.1,96,250/-	Rs.4,54,750/-	enhanced by Rs.2,58,500/-
	Rounded off to	Rs.1,96,300/-	Rs.4,54,800	

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,96,300/- is hereby enhanced to Rs.4,54,800/- together with interest at the rate of 7.5% per annum (except for Rs.7,500/- awarded towards future medical expenses) from the date of petition till the date of deposit. The second 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/ claimant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.2,58,500/-, enhanced by this Court as per the order of this Court dated 27.07.2018, made in C.M.P.No.10764 of 2019 in C.M.A. SR. No. 28035 of 2018. No costs. No costs.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

vkrr

To

1. Motor Accident Claims Tribunal,
The IV Judge, Small Causes Court,
Chennai.
2. The Section Officer,
VR Section, High Court,
Madras.

+1cc to M/s.M.Malar, Advocate, S.R.No.4152

CS/04/01/2021

C.M.A.No.1761 of 2018

WEB COPY