

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3119 of 2019

K.Muniyandi

.. Appellant

Vs.

1.M.Kaveri

2.Iffco Tokkio General Insurance Company Limited,
Customer Service Centre,
ITGI Strategic Business Unit,
28, 2nd Floor, North Usman Road,
T.Nagar, Chennai - 600 017.

3.S.Jeyanthi

4.Royal Sundaram Alliance Insurance Company Limited,
TVS Co-operative Stores Buildings,
37, Krishna Rao Tank Street,
Madurai - 625 001.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.11.2017 made in M.C.O.P.No.1733 of 2012 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.V.Balamurugan
For R2 : Mr.S.Arunkumar
For R4 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 17.11.2017 made in M.C.O.P.No.1733 of 2012 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.1733 of 2012 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 08.07.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the car belonging to the 1st respondent and directed the 2nd respondent, being the insurer of the car to pay a sum of Rs.87,000/- 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 in the accident the appellant sustained fracture in neck C3 inferior and extension avulsion fracture with C6 and C7, fracture of D2-D3 clavicle junction bone, injury in pelvis and nasal bone and multiple rib fractures. To prove the same, the appellant examined P.W.3/Doctor. P.W.3/Doctor examined the appellant and certified that appellant suffered 45% disability and issued Ex.P13/disability certificate to that effect. The Tribunal without giving any valid reason, reduced the percentage of disability to 4% and awarded compensation. The Tribunal ought to have awarded compensation for 45% disability. The appellant was aged 45 years at the time of accident and was running a Medical Shop and was earning a sum of Rs.25,000/- per month. The Tribunal has awarded only a sum of Rs.12,000/- towards loss of income without fixing monthly income. The Tribunal erred in restricting the actual amounts spent for medical expenses from Rs.16,655/- to Rs.10,800/- and Rs.1,44,168/- to Rs.30,000/-. The Tribunal ought to have awarded entire medical expenses. The amounts awarded by the Tribunal towards attendant charges, loss of income, pain and sufferings are meagre. The Tribunal has not awarded any amount towards future prospects. 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 contended that the Tribunal reduced the percentage of disability from 45% to 4% on the ground that malunited clavicle fracture can be cured by way of physiotherapy treatment and also disability assessed by P.W.3/Doctor is not permanent disability. Hence, the appellant is not entitled to compensation for 45% disability. The appellant has not produced any material evidence to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, a sum of Rs.12,000/- awarded by the Tribunal towards loss of income is not meagre. The amounts awarded by the Tribunal under different heads are just compensation. 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. From the award passed by the Tribunal, it is seen that in the accident the appellant sustained fracture in neck C3 inferior and extension avulsion fracture with C6 and C7, fracture of D2-D3 clavicle junction bone, injury in pelvis and nasal bone and multiple rib fractures. To prove the nature of injuries and disability suffered by him, the appellant examined P.W.3/Doctor. P.W.3/Doctor examined the appellant and certified that appellant suffered 45% disability and issued Ex.P13/disability certificate to that effect. The 2nd respondent did not let in any contra evidence to disprove the contention of P.W.3/Doctor and Ex.P13/disability certificate. The Tribunal reduced the percentage of disability to 4% on the ground that the action of malunited clavicle fracture can be regained and it can be cured by way of physiotherapy treatment and also disability assessed by P.W.3/Doctor is not permanent disability. The reason given by the Tribunal for reducing the percentage of disability is not correct. Therefore, the appellant is entitled to compensation for 45% disability. The accident occurred in the year 2010 and the Tribunal has awarded a sum of Rs.3,000/- per percentage of disability, which is proper. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,35,000/- [Rs.3,000/- X 45% of disability].

9. It is the contention of the appellant that he was aged 45 years and was running a Medical Shop and was earning a sum of Rs.25,000/- per month at the time of accident. The appellant failed to prove the same and the Tribunal has awarded only a sum of Rs.12,000/- towards loss of income without fixing monthly income of the appellant. Considering the age, nature of work done by the appellant and year of accident, a sum of Rs.10,000/- per month is fixed as notional income of the appellant. Due to the injuries and disability sustained by him, he would not have attended his work at least for a period of six months. Therefore, the appellant is entitled to a sum of Rs.60,000/- [Rs.10,000/- X 6 months] towards loss of income. From the award passed by the Tribunal, it is seen that the appellant has taken treatment in the Sundaram Medical foundation Memorial Hospital as in-patient for 6 days from 09.07.2010 to 14.07.2010. The amounts awarded by the Tribunal towards attendant charges, pain and sufferings, transportation and extra nourishment are meagre and hence, the same are hereby enhanced to Rs.10,000/-, Rs.20,000/-, Rs.10,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of amenities and damages to clothes. Therefore, a sum of Rs.15,000/- and Rs.1,000/- are awarded towards loss of amenities and damages to clothes

respectively. As per Exs.P4/Medical Bills and P5/Hospital charges, the appellant claimed that he has spent a sum of Rs.16,655/- and Rs.1,44,168/- towards medical expenses. The 2nd respondent did not let in any contra evidence to disprove Exs.P4 and P5 but the Tribunal without giving any valid reason awarded only a sum of Rs.40,800/- towards medical expenses. In view of the same as per Exs.P4 and P5, the appellant is entitled to a sum of Rs.1,60,823/- (Rs.16,655/- + Rs.1,44,168/-) towards medical expenses. The Tribunal has not awarded any amount towards future medical expenses. P.W.3/Doctor has deposed that the plate fixed in neck bone and cervical bone of the appellant has to be removed. In view of the same, the appellant is entitled to a sum of Rs.20,000/- towards future medical expenses. 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	12,000/-	1,35,000/-	Enhanced
2.	Pain and sufferings	10,000/-	20,000/-	Enhanced
3.	Attendant charges	2,000/-	10,000/-	Enhanced
4.	Extra nourishment	5,000/-	15,000/-	Enhanced
5.	Transportation	5,000/-	10,000/-	Enhanced
6.	Medical expenses	40,800/-	1,60,823/-	Enhanced
7.	Loss of income	12,000/-	60,000/-	Enhanced
8.	Loss of amenities	-	15,000/-	Granted
9.	Damages to clothes	-	1,000/-	Granted
10.	Future medical expenses	-	20,000/-	Granted
	Total	Rs.86,800/- rounded off to Rs.87,000/-	Rs.4,46,823/- rounded off to Rs.4,47,000/-	enhanced by Rs.3,60,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.87,000/- is hereby enhanced to Rs.4,47,000/- together with interest at the rate of 9% per annum from the date of petition

till the date of deposit. 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, to the credit of M.C.O.P.No.1733 of 2012 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. 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 by making necessary applications before the Tribunal. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court. No costs.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

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

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C.M.A.No.3119 of 2019

SSV(CO)
SP(20/04/2021)

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