

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 4248 of 2019

Illayaraja

.. Appellant/Petitioner

Vs.

1.S. Jeganathan

2.The Oriental Insurance Co. Ltd.,

Third Party Cell,

No.216, Prakasam Salai,

Broadway, Chennai 108.

(1st respondent remained exparte before the Tribunal)

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 21.03.2018, made in M.C.O.P.No. 2958 of 2012, on the file of the II Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. K.R. Ponnusamy
for M/s. Anand and Suryas

For Respondents : Mr. D. Bhaskaran (for R2)

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 21.03.2018, made in M.C.O.P. No. 2958 of 2012, on the file of the II Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-claimant filed M.C.O.P. No. 2958 of 2012, on the file of the II Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.15,00,000/- as

compensation for the injuries sustained by him in the accident that took place on 07.08.2011.

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 Cargo Van belonging to the 1st respondent and directed the 2nd respondent, as insurer of the vehicle to pay a sum of Rs.75,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 21.03.2018, made in M.C.O.P. No. 2958 of 2012, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended that in the accident the appellant suffered severe head injuries and took treatment as in-patient in Christian Medical College Hospital, Vellore, for a period of 5 days. P.W.2 and P.W.3-Doctors assessed the percentage of disability suffered by the appellant as 25%. The Tribunal failed to award any amount towards disability suffered by the appellant. Due to the injuries sustained in the accident, the appellant has taken 20 days medical leave and incurred loss of income. The Tribunal ought to have awarded loss of income for the said period. Considering the nature of injuries and period of treatment taken, the Tribunal ought to have awarded compensation separately under the heads loss of amenities, damages to clothes, extra nourishment, transport expenses, pain and suffering, attendant charges, loss of earning power, instead of awarding a lumpsum amount of Rs.75,000/- as compensation. The total compensation granted by the Tribunal is meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the nature of injuries and period of treatment taken by the appellant, has rightly rejected the evidence of P.W.2 & P.W.3-Doctors and the disability certificates issued by them and awarded a sum of Rs.75,000/- as compensation, which is not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

8.It is the contention of the appellant that in the accident, he suffered head injuries, abrasion and laceration all

over the body and took treatment as in-patient in Christian Medical College Hospital, Vellore from 07.08.2011 to 11.08.2011. P.W.2 and P.W.3- Doctors assessed the percentage of disability suffered by the appellant as 25%. From the materials on record, it is seen that the appellant has taken treatment for a period of 4 days conservatively and there is no bone injury and no disability. Hence, the Tribunal did not accept the evidence of P.W.2 and P.W.3 Doctors and the disability certificates issued by them. The reason given by the Tribunal is valid and the appellant is not entitled for compensation towards disability. The Tribunal has awarded a lumpsum amount of Rs.75,000/- as compensation, which is erroneous and the same is set aside, as the appellant is entitled to compensation under different heads. The appellant has contended that at the time of accident, he was working as Government Teacher at P.U.M. School, Thuraiyur, Nemili Block and was earning a sum of Rs.27,137/- per month. Due to the injuries sustained in the accident, he could not attend his work for a period of 20 days. Hence, a sum of Rs.16,155/- (Rs.807.76/- x 20 days) is awarded towards loss of income for a period of 20 days at the rate of Rs.807.76/- per day. From Ex.P2 - medical bills, it is seen that the appellant has incurred a sum of Rs.33,747/- towards medical expenses. Hence, a sum of Rs.33,747/- is awarded towards medical expenses. Considering the nature of injuries and period of treatment taken by the appellant, this Court awards a sum of Rs.10,000/- each towards attendant charges and extra nourishment, Rs.15,000/- towards pain and suffering and Rs.2,000/- towards damage to clothes. 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.	Lumpsum compensation	75,000/-	-	Set aside
2.	Pain and suffering	-	15,000/-	Granted
3.	Extra nourishment	-	10,000/-	Granted
4.	Attendant charges	-	10,000/-	Granted
5.	Medical expenses	-	33,747/-	Granted
6.	Loss of income	-	16,155/-	Granted

7.	Damage to clothes	-	2,000/-	Granted
	Total	75,000/-	86,902/-	Enhanced by Rs.11,902/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.75,000/- is enhanced to Rs.86,902/- together with interest and costs. The 2nd respondent is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 2958 of 2012. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.11,902/-. It is made clear that the appellant is not entitled to any interest for the delay period on the amount of Rs.11,902/-, enhanced by this Court as per the order of this Court dated 30.10.2019, made in C.M.P. No. 20796 of 2019 in C.M.A. SR. 71394 of 2019. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1. The II Judge,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

+1 cc to M/s.D.Bhaskaran, Advocate Sr.No. 15927

+1 cc to M/s.Anand & Suryas, Advocate Sr.No. 15759

C.M.A. No. 4248 of 2019

MR (CO)

RMP (08/01/2021)