

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.335 of 2013

L.Krishnamoorthy

.. Appellant/ Petitioner

Vs.

1.M.Madhan Kumar

2.The United India Insurance Company Limited,
No.58, Pурсawakkam High Road,
Chennai - 600 007. .. Respondents/ Respondents

(R1 remained exparte before Tribunal.
Hence, notice to R1 dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.07.2012 made in M.C.O.P.No.2466 of 2008 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mr.D.Bhaskaran

For R1 : Exparte before the Tribunal

J U D G M E N T

सत्यमेव जयते

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 24.07.2012 made in M.C.O.P.No.2466 of 2008 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

3.The appellant is the claimant in M.C.O.P.No.2466 of 2008 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.1,20,000/- as compensation for the injuries sustained by him in the accident that took place on 02.06.2008.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.27,007/- as compensation to the appellant.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellant contended that in the accident the appellant suffered fracture in right shoulder, laceration and abrasions all over the body and P.W.2/Doctor examined the appellant and certified that appellant suffered 25% disability. The Tribunal without giving any valid reason, reduced the percentage of disability to 10% and awarded compensation only for 10% disability. The appellant was working as Sub-Staff in Indian Bank and was earning a sum of Rs.8,600/- per month. But the Tribunal has awarded only a meagre sum of Rs.2,007/- towards loss of income for one week. The amounts awarded by the Tribunal towards transportation, extra nourishment, medical expenses and pain and sufferings are meagre. The Tribunal failed to award any amount towards attendant charges and loss of earning power. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation.

7.Per contra, learned counsel appearing for a the 2nd respondent-Insurance Company contended that the Tribunal rightly reduced the percentage of disability from 25% to 10% on the ground that assessment of disability by P.W.2/Doctor is on the higher side. Therefore, the appellant is not entitled to compensation for 25% disability. The appellant has not proved his avocation and income by any oral or documentary evidence. In the absence of any evidence to prove the income of the appellant, a sum of Rs.2,007/- awarded by the Tribunal towards loss of income is excessive. The appellant has not taken treatment as inpatient. Hence, he is not entitled to any amount towards attendant charges. The amounts awarded by the Tribunal towards transportation, extra nourishment, medical expenses and pain and sufferings are not meagre. The total compensation awarded by the Tribunal at Rs.27,007/- for the simple injuries sustained by the appellant is excessive and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

9. From the materials available on record, it is seen that in the accident the appellant suffered fracture in right shoulder, laceration and abrasions all over the body. P.W.2/Doctor examined the appellant and certified that appellant suffered 25% disability and issued Ex.P8/disability certificate to that effect. The Tribunal reduced the percentage of disability assessed by P.W.2/Doctor from 25% to 10% on the ground that assessment of disability by P.W.2/Doctor is on the higher side. The said reason given by the Tribunal for reducing the percentage of disability from 25% to 10% is not correct. The 2nd respondent-Insurance Company has not let in any contra evidence to disprove the evidence of P.W.2/Doctor and Ex.P8/disability certificate. Therefore, the appellant is entitled to compensation for 25% disability. The accident occurred in the year 2008 and a sum of Rs.2,000/- awarded by the Tribunal per percentage of disability is proper. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.50,000/- (Rs.2,000/- X 25% of disability).

10. It is the contention of the appellant that he was working as Sub-Staff in Indian Bank and was earning a sum of Rs.8,600/- per month. The appellant has not produced any salary certificate to prove his income. The Tribunal considering the age and nature of injuries sustained by the appellant, awarded a sum of Rs.2,007/- towards loss of income for one week. The accident occurred in the year 2008 and the compensation awarded by the Tribunal towards loss of income is meagre. Considering the age and nature of injuries sustained by the appellant, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.5,000/-. The appellant has not taken treatment in the hospital as inpatient. Hence, he is not entitled to any amount towards attendant charges. The appellant has not proved that he suffered functional disability and lost his earning power. Hence, he is not entitled to any amount towards loss of earning power. The amounts awarded by the Tribunal towards transportation, extra nourishment, medical expenses and pain and sufferings 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
1.	Disability	20,000/-	50,000/-	Enhanced
2.	Pain and sufferings	2,000/-	2,000/-	Confirmed
3.	Loss of income	2,007/-	5,000/-	Enhanced
4.	Medical expenses	1,000/-	1,000/-	Confirmed

5.	Extra nourishment	1,000/-	1,000/-	Confirmed
6.	Transportation	1,000/-	1,000/-	Confirmed
	Total	Rs.27,007/-	Rs.60,000/-	Enhanced by Rs.32,993/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.27,007/- is hereby enhanced to Rs.60,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the 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.2466 of 2008 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

krk
To

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

2.The Section Officer,
VR Section,
High Court,
Madras.

+2ccs to Mr.V.Mohan choudary, Advocate SR.No. 40007

C.M.A.No.335 of 2013

A.SK(16.04.2021)