



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2216 of 2014

A.Sathish

..Appellant/Petitioner

Vs.

1.J.Kanaga

2.The New India Assurance Company Limited,
No.7, Ramalinga Madalaya Street,
Salem - 636 006.

Having third party cell at
No.69/70, Sheikpet Nadu Street,
Kancheepuram.

Policy No.720407/31/03/008333 from
17.04.2003 to 16.04.2003

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.04.2014 made in M.C.O.P.No.118 of 2003 on the file of the Motor Accident Claims Tribunal, Sub Court, Madurantakam.

For Appellant : Mr.S.S.Swaminathan

For R1 : No appearance

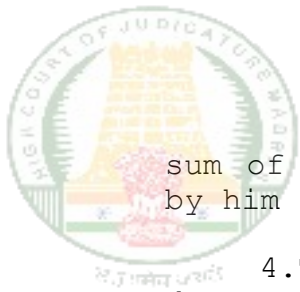
For R2 : Mr.K.Padmanabhan

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 21.04.2014 made in M.C.O.P.No.118 of 2003 on the file of the Motor Accident Claims Tribunal, Sub Court, Madurantakam.

3.The appellant is the claimant in M.C.O.P.No.118 of 2003 on the file of the Motor Accident Claims Tribunal, Sub Court, Madurantakam. He filed the above said claim petition, claiming a



sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 13.06.2003.

4.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 jeep belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the jeep to pay a sum of Rs.3,58,328/- 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 the appellant was working as Marketing Executive in Inter Touch Metal Building Private Limited, Anna Nagar, Chennai and was earning a sum of Rs.10,000/- per month. In the accident, the appellant suffered grievous injuries and two fractures in right tibial junction of Mid 3 / and Distal / 3rd, and patella right. The Tribunal ought to have adopted multiplier method for granting compensation towards loss of earning capacity. The Tribunal having held that appellant suffered 35% loss of earning capacity, erred in granting compensation by percentage method. The Tribunal ought to have awarded a sum of Rs.2,000/- per percentage of disability for 40% of disability as assessed by Doctor instead of 35% disability apart from awarding compensation towards loss of earning capacity. The appellant produced Ex.P4/salary certificate to show that he was earning a sum of Rs.9,500/- per month. The Tribunal erroneously fixed a meagre sum of Rs.8,000/- per month as notional income of the appellant. The amounts awarded by the Tribunal towards pain and sufferings, transportation, extra nourishment and loss of income are meagre. The appellant has taken treatment in the hospital as in-patient from 13.06.2003 to 21.06.2003 for 9 days. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant did not prove that he lost his income. P.W.2 and P.W.3/Doctors have not deposed that appellant suffered functional disability or loss of earning power. The Tribunal considering the materials placed before it, awarded compensation by adopting percentage method which is proper. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.



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8. Though notice has been served on the 1st respondent and her name is printed in the cause list, there is no representation on behalf of her, either in person or through counsel.

9. 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.

10. From the materials available on record, it is seen that it is the contention of the appellant that in the accident, he suffered grievous fracture of right tibial junction of Mid 3 / and Distal / 3rd, fracture of patella right. The appellant as P.W.1 deposed to that effect and also examined P.W.2 and P.W.3/Doctors. P.W.3/Doctor examined the appellant and assessed that appellant suffered 40% disability. P.W.3/Doctor deposed that appellant cannot walk and run fast. Considering the evidence of P.W.3/Doctor and disability certificate, Tribunal held that appellant and P.W.3/Doctor have not deposed that appellant lost earning power and due to the fracture in the right leg, it can be accepted that appellant's loss of earning power is 40%. On such conclusion, the Tribunal awarded compensation at the rate of Rs.2,000/- per percentage of disability for 35% of disability. The contention of the appellant that Tribunal ought to have awarded compensation by adopting multiplier method or in any event the Tribunal ought to have granted compensation at the rate of Rs.2,000/- per percentage of disability for 40% of disability are without merits in view of the facts of the present case. The accident occurred in the year 2003 and the Tribunal has granted excessive amount of Rs.2,000/- per percentage of disability instead of awarding a sum of Rs.1,000/- per percentage of disability. In view of the same, the appellant is not entitled to any enhancement towards disability. The Tribunal accepted the document filed by the appellant and awarded a sum of Rs.9,000/- towards transportation. But while calculating the quantum of compensation, the Tribunal granted only a sum of Rs.3,000/- towards transportation. The appellant is entitled to a sum of Rs.9,000/- towards transportation as awarded by the Tribunal.

11. It is the contention of the appellant that he was working as Marketing Executive in Inter Touch Metal Building Private Limited, Anna Nagar, Chennai and was earning a sum of Rs.10,000/- per month. To prove the same, the appellant produced Ex.P4/salary certificate. The Tribunal did not accept Ex.P4/salary certificate on the ground that the author of Ex.P4 was not examined. Though the Tribunal has held that the appellant would have earned a sum of Rs.8,000/- per month, fixed a sum of Rs.250/- per day as the income of the appellant and awarded a sum of Rs.2,250/- towards loss of income for 9 days. Hence, a sum of Rs.8,000/- per month



is fixed as notional income of the appellant. Due to the injuries sustained by him in the accident, the appellant would not have worked atleast for a period of four months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.32,000/- (Rs.8,000/- X 4 months). From the award passed by the Tribunal, it is seen that the appellant has taken treatment in the hospital as in-patient from 13.06.2003 to 21.06.2003 for 9 days and the Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the nature of disability and period of treatment taken by the appellant, the appellant is entitled to a sum of Rs.5,000/- towards attendant charges and Rs.7,500/- towards loss of amenities. Considering the nature of injuries, the compensation awarded by the Tribunal towards extra nourishment is meagre and the same is enhanced to Rs.7,500/-. The amounts awarded by the Tribunal towards pain and sufferings and medical expenses 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	70,000/-	70,000/-	Confirmed
2.	Pain and sufferings	15,000/-	12,000/-	Confirmed
3.	Loss of income	2,250/-	32,000/-	Enhanced
4.	Extra nourishment	5,000/-	7,500/-	Enhanced
5.	Transportation	3,000/-	9,000/-	Enhanced
6.	Medical expenses	2,63,078/-	2,63,078/-	Confirmed
7.	Attendant charges	-	5,000/-	Granted
8.	Loss of amenities	-	7,500/-	Granted
	Total	Rs.3,58,328/-	Rs.4,06,078/-	enhanced by Rs.47,750/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,58,328/- is hereby enhanced to Rs.4,06,078/- 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 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.118 of 2003 on the file of the Motor Accident Claims Tribunal, Sub Court, Madurantakam. On such deposit, the appellant is permitted to withdraw the enhanced 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.

-s/d-

Assistant Registrar(CCC)

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Sub-Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Madurantakam.

Copy to

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

+1 CC to Mr.S.S.Swaminathan, Advocate sr 37860.

C.M.A.No.2216 of 2014

VBA(CO)
SP(17/08/2021)