



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2464 of 2014

K.Durai

.. Appellant/Petitioner

Vs.

1.D.Moorthy

2.Oriental Insurance Company Limited,
No.8, Esplanade,
Chennai - 600 108.

.. Respondents/Respondents

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

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.04.2013 made in M.C.O.P.No.1214 of 2011 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mr.J.Chandran

R1 - Exparte

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 16.04.2013 made in M.C.O.P.No.1214 of 2011 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

3.The appellant is the claimant in M.C.O.P.No.1214 of 2011 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. He filed the above 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 06.02.2011.

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 car belonging to the 1st respondent and directed the 2nd respondent to pay a sum of Rs.1,90,500/- 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 Grade II Compound Fracture lateral tibial condyle and patellar tendon injury and quadriceps tear at right knee and abrasions all over the body. P.W.2/Doctor examined the appellant and certified that appellant suffered 40% disability and issued Ex.P12/disability certificate to that effect. The Tribunal without giving any valid reason, reduced the percentage of disability to 35% and awarded compensation only for 35% of disability at the rate of Rs.2,000/- per percentage of disability. The Tribunal ought to have awarded compensation for 40% disability. The appellant was a Tiles, Marble and Mosaic Mason and was earning a sum of Rs.600/- per day. But the Tribunal fixed a meagre sum of Rs.4,500/- per month as notional income of the appellant and awarded compensation towards loss of income only for four months. The appellant has taken treatment as inpatient for 7 days from 06.02.2011 to 12.02.2011 in two different spells at two different hospitals. The Tribunal has not awarded any amount towards attendant charges, loss of amenities, loss of earning power and future medical expenses. The amounts awarded by the Tribunal towards pain and sufferings, extra nourishment and transportation are meagre and prayed for enhancement of compensation.

7. Per contra, the learned counsel appearing for the 2nd respondent contended that the Tribunal reduced the percentage of disability from 40% to 35% on the ground that assessment of disability by P.W.2/Doctor is on the higher side. Hence, the appellant is not entitled to compensation for 40% disability and a sum of Rs.2,000/- per percentage of disability awarded by the Tribunal is excessive. 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, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the appellant and awarded compensation towards loss of income for four months, which is not meagre. The appellant has not suffered any functional disability and hence, he is not entitled to any compensation towards loss of earning capacity. The amounts awarded by the Tribunal under different heads are not meagre 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 and



perused the entire materials on record.

9. From the materials available on record, it is seen that it is the contention of the appellant that in the accident he suffered Grade II Compound Fracture lateral tibial condyle and patellar tendon injury and quadriceps tear at right knee and abrasions all over the body. To prove the same, the appellant examined himself as P.W.1 and P.W.2/Doctor. P.W.2/Doctor examined the appellant and certified that appellant suffered 40% disability and issued Ex.P12/disability certificate to that effect. The Tribunal reduced the percentage of disability from 40% to 35% on the ground that assessment of disability by P.W.2/Doctor is on the higher side. The reason given by the Tribunal for reducing the percentage of disability from 40% to 35% is not correct. The 2nd respondent has not let in any evidence to disprove the evidence of P.W.2/Doctor and Ex.P12/disability certificate. Therefore, the appellant is entitled to compensation for 40% of disability. The accident occurred in the year 2011 and the appellant is entitled to a sum of Rs.3,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,20,000/- (Rs.3,000/- X 40% disability). The appellant has not proved that he suffered functional disability and lost his earning capacity. Hence, he is not entitled to compensation towards loss of earning capacity.

10. It is the contention of the appellant that he was working as Tiles, Marble and Mosaic Mason and was earning a sum of Rs.600/- per day. He failed to prove the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the appellant and awarded compensation towards loss of income for four months. The accident occurred in the year 2011 and the notional income fixed by the Tribunal is meagre. Therefore, a sum of Rs.7,000/- per month is fixed as notional income of the appellant. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.28,000/- (Rs.7,000/- X 4 months). The appellant has taken treatment as inpatient for 7 days from 06.02.2011 to 12.02.2011 in two different spells at two different hospitals. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.5,000/- is granted towards attendant charges and Rs.10,000/- towards loss of amenities. The appellant has not produced any medical records to show that he requires amount for future medical treatment. Hence, he is not entitled to any amount towards future medical expenses. 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	70,000/-	1,20,000/-	Enhanced
2.	Pain and sufferings	25,000/-	25,000/-	Confirmed
3.	Loss of income	18,000/-	28,000/-	Enhanced
4.	Medical expenses	61,150/-	61,150/-	Confirmed
5.	Extra nourishment	7,000/-	7,000/-	Confirmed
6.	Transportation	9,350/-	9,350/-	Confirmed
7.	Attendant charges	-	5,000/-	Granted
8.	Loss of amenities	-	10,000/-	Granted
	Total	Rs.1,90,500/-	Rs.2,65,500/-	Enhanced by Rs.75,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,90,500/- is hereby enhanced to Rs.2,65,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent 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.1214 of 2011 on the file of the Motor Accident Claims Tribunal, III 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-V)

//True Copy//

Sub Assistant Registrar

krk



To

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

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

+2cc to Mr.Mohan Choudary, Advocate, S.R.No.42796

+1cc to Mr.Chandran, Advocate, S.R.No.42332

C.M.A.No.2464 of 2014

MG(CO)
GN(25/08/2021)