

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2569 of 2014

Bharathi

.. Appellant /Petitioner

Vs.

1.Umapathi

2.The Divisional Manager,

The United India Insurance Co. Ltd.,

No. 46, Katpadi Road,

Vellore.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 08.12.2010, made in M.C.O.P. No. 290 of 2004, on the file of the Chief Judicial Magistrate Court, (Motor Accident Claims Tribunal), Thiruvannamalai.

For Appellant : Mr. F. Terry Chellaraja

For Respondents: Mr. J. Michael Visuvasam (for R2)
R1-Exparte

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 08.12.2010, made in M.C.O.P. No. 290 of 2004, on the file of the Chief Judicial Magistrate Court, (Motor Accident Claims Tribunal), Thiruvannamalai.

2.The appellant-claimant filed M.C.O.P. No. 290 of 2004, on the file of the Chief Judicial Magistrate Court, (Motor Accident Claims Tribunal), Thiruvannamalai, claiming a sum of Rs.1,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.08.2003.

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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 Bus belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.37,500/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 08.12.2010, made in M.C.O.P. No. 290 of 2004, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended that due to the accident, the appellant sustained fracture in left wrist and laceration all over the body. To substantiate the same, he has marked Exs.P3 to P5, P8 and P9 and proved the injuries sustained by him, by examining P.W.2 - Doctor, who assessed that the appellant suffered 25% disability and issued Ex.P8 - Disability Certificate to that effect. However, the Tribunal reduced the percentage of disability to 20% without giving any reason. The appellant is entitled to compensation for 25% disability. The appellant has taken treatment as in-patient for a period of 4 days. At the time of accident, the appellant was working as a Coolie and was earning a sum of Rs.3,000/- per month. The Tribunal has not awarded any amount towards loss of income, attendant charges, extra nourishment and mental agony. The Tribunal ought to have awarded compensation under the heads, transportation expenses, medical expenses and future medical expenses separately. In any event, the total compensation granted by the Tribunal under different heads are meagre and prayed for enhancement of the same.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal rightly considering that P.W.2-Doctor is not the Doctor who treated the appellant, reduced the percentage of disability assessed by P.W.2 - Doctor to 20% and awarded compensation for disability. The Tribunal considering all the materials on record in proper perspective, awarded compensation under different heads, which are 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.

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8.It is the contention of the appellant that in the accident, he suffered fracture in left wrist and laceration all over the body and has taken treatment as in-patient in Government General Hospital, Thiruvannamalai for a period of 4 days. P.W.2- Doctor has assessed the percentage of disability suffered by the appellant as 25%. The respondents did not let in any evidence to disprove the evidence of P.W.2 - Doctor and disability certificate marked as Ex.P8. The Tribunal reduced the percentage of disability to 20% on the ground that P.W.2 - Doctor is not the Doctor who treated the appellant. The reason given by the Tribunal for reducing the percentage of disability is not valid. The appellant is entitled to compensation towards disability for 25% disability, as there is no contra evidence. Hence, the amount granted by the Tribunal towards disability is enhanced to Rs.25,000/- (Rs.1,000/- x 25% disability). The Tribunal has not awarded any amount towards attendant charges. Considering the period of treatment taken, this Court awards a sum of Rs.1,000/- towards attendant charges. The consolidated sum of Rs.10,000/- awarded by the Tribunal towards medical expenses, transport charges and future medical expenses is meagre and hence, the same is enhanced to Rs.15,000/-. The amount awarded by the Tribunal towards pain and suffering is just and reasonable and hence, the same is 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/-	25,000/-	Enhanced
2.	Pain and suffering	7,500/-	7,500/-	Confirmed
3.	Medical expenses, transportation and future medical expenses	10,000/-	15,000/-	Enhanced
4.	Attendant charges	-	1,000/-	Granted
	Total	37,500/-	48,500/-	Enhanced by Rs.11,000/-

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9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.37,500/- is enhanced to Rs.48,500/- along with interest and costs. The 2nd respondent-Insurance Company 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. 290 of 2004. 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. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.11,000/-, enhanced by this Court as per the order of this Court dated 28.08.2014, made in M.P. No. 2 of 2014 in C.M.A. SR. 89162 of 2012. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.11,000/-. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal),
Thiruvannamalai.

2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.Michael Visuvasam, Advocate SR.24223

+1cc to Mr.Terry Chella Raja, Advocate SR.24399

MG (CO)
CB (02/12/2020)

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