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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2871 of 2014

K. Boopalan

.. Appellant/Claimant

Vs.

1.Thalka Ramla

2.Bajaj Allianz General Insurance Co. Ltd.,

No.25/26, College Road,
Nungambakkam, Chennai 6.

(Now operating from Old No.276 & 277,
New No.497 & 498, "Isana Kattima Building",
5th Floor, Poonamallee High Road,
Arumbakkam, Chennai 600 106).

.. Respondents/Respondents

(R1 remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.06.2014, made in M.C.O.P. No.2986 of 2006, on the file of the III Judge, Court of Small Causes, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr. G. Balaji Prasad
for M/s. S. Gangaram Prasad

For Respondents: Mr. Premkumar (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of compensation granted by the award dated 12.06.2014, made in M.C.O.P. No.2986 of 2006, on the file of the III Judge, Court of Small Causes, (Motor Accident Claims Tribunal) Chennai.

2.The appellant-claimant filed M.C.O.P. No.2986 of 2006, on the file of the III Judge, Court of Small Causes, (Motor Accident Claims Tribunal) Chennai, claiming a sum of



Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 24.05.2006.

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 Car belonging to the 1st respondent and directed the 2nd respondent as insurer of the offending vehicle to pay a sum of Rs.2,30,648/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 12.06.2014, made in M.C.O.P. No.2986 of 2006, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained facial abrasion, fracture in shaft of femur left side and multiple injuries. The appellant suffered 50% Ortho disability and 25% disability for eye, totally 75% disability. The appellant examined P.W.2 - Ortho Specialist and P.W.3 - Ophthalmologist and proved the same. The Tribunal without any reason, reduced the percentage of disability to 50% from 75%. The amount granted by the Tribunal towards disability is meagre. The Tribunal ought to have awarded compensation towards loss of earning power by adopting multiplier method. The appellant has taken treatment as in-patient at Doctor Rex's Hospital from 25.05.2006 to 04.06.2006, for a period of 11 days. The amounts awarded by the Tribunal towards pain and suffering and extra nourishment are meagre. The appellant produced Ex.P4 - medical bills for Rs.55,810.02/-. The Tribunal without assigning any reasons, reduced the same to Rs.46,648/-. The appellant produced Ex.P5- Physiotherapy bills for Rs.16,800/-. The Tribunal erroneously reduced the same to Rs.5,000/-, without assigning any reasons. The appellant has to undergo surgery for removal of internal fixation. The Tribunal failed to award compensation for future medical expenses, damages to clothes and attendant charges. The appellant was aged 47 years at the time of accident and was working as an Accountant in Nag Scanner Private Limited and was earning a sum of Rs.9,000/- per month. He has examined P.W.4 - authorised representative of the employer. Through P.W.4, the appellant marked Salary Certificate, Attendance Register and Wage Register as Exs.P8, P16 and P17 respectively. The Tribunal without considering the evidence of P.W.4 and documents marked, erroneously fixed the income of the appellant as Rs.4,500/- per month. P.W.4 deposed that the appellant did not attend the office for 10 months. The Tribunal without considering the evidence of P.W.4, granted only Rs.30,000/- for loss of income and prayed for enhancement of the compensation.



6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the injuries suffered by the appellant are not permanent in nature. P.W.2 and P.W.3 Doctors have exaggerated the nature of injuries and disability of the appellant. The percentage of disability assessed by them are on higher side. The Tribunal rightly reduced the same to 50%. The appellant has not suffered any functional disability and hence, he is not entitled to any compensation by adopting multiplier method. The total compensation awarded by the Tribunal under different heads 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 learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

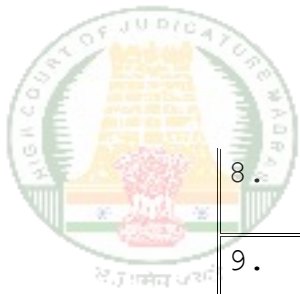
8. From the materials on record, it is seen that it is the contention of the appellant that in the accident, he suffered fracture in right thigh bone and injury in face and his eye is affected. Apart from examining himself as P.W.1, the appellant examined P.W.2 and P.W.3 Doctors. P.W.2 Doctor assessed the disability for thigh bone fracture and face abrasion. P.W.3 Doctor also assessed separately for face injury. The Tribunal considering the same, reduced the percentage of disability assessed by P.W.2 Doctor. P.W.3 Doctor assessed the disability for eye at 25%, stating that the appellant is not able to close his eye. When the appellant appeared before the Tribunal, the learned Judge found that the appellant is able to close his eyes with his upper lid. Considering the above, the Tribunal reduced the percentage of disability to 50% and granted compensation. The Tribunal has given valid reason for reducing the percentage of disability.

9. The appellant examined P.W.4 - authorized representative of his employer who deposed that the appellant was working as Accountant and is paid Rs.9,000/- per month. P.W.4 also produced Attendance Register, Wage Register and Salary Certificate. The Tribunal without properly appreciating the evidence of P.W.4 and documents produced, erroneously did not accept the contention of the appellant that he was earning Rs.9,000/- per month and fixed only Rs.4,500/- per month. The same is not correct. A sum of Rs.9,000/- as claimed by the appellant is fixed as his monthly income. The contention of the learned counsel for the appellant that Tribunal ought to have awarded compensation by adopting multiplier method is without merits. From the evidence of P.W.4,



it is seen that the appellant was not paid salary only for 10 months. Hence, the appellant is not entitled to compensation by adopting multiplier method for loss of earning power. The Tribunal granted a sum of Rs.30,000/- for loss of income. The same is enhanced to Rs.90,000/- [Rs.9,000/- x 10 months]. The appellant produced Ex.P4 - medical bills which shows that he has incurred Rs.55,810/- and Ex.P5 - Physiotherapy Bills for Rs.16,800/-. The Tribunal without giving any reason, awarded only a sum of Rs.51,648/- [Rs.46,648 for medical expenses and Rs.5,000/- for physiotherapy treatment], under the head, medical expenses. Considering Exs.P4 and P5, the amount granted by the Tribunal towards medical expenses and physiotherapy treatment are enhanced to Rs.72,610/- [Rs.55,810/- and Rs.16,800/-]. Considering the nature of injuries and disability suffered, the amount granted towards loss of amenities and extra nourishment are enhanced to Rs.15,000/- and Rs.10,000/- respectively. The appellant has taken treatment as in-patient for a period of 11 days in Hospital. Hence, he is entitled to a sum of Rs.7,500/- towards attendant charges. The Tribunal failed to award any amount towards damages to clothes and future medical expenses. The appellant is entitled to a Rs.1,000/- towards damages to clothes and Rs.10,000/- towards future medical expenses for removal of implants. The amounts awarded by the Tribunal under other heads 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.	Loss of income	30,000/-	90,000/-	Enhanced
2.	Transportation	7,000/-	7,000/-	Confirmed
3.	Extra nourishment	7,000/-	10,000/-	Enhanced
4.	Medical expenses	51,648/-	72,610/-	Enhanced
5.	Loss of amenities	5,000/-	15,000/-	Enhanced
6.	Pain and suffering	30,000/-	30,000/-	Confirmed
7.	Disability	1,00,000/-	1,00,000/-	Confirmed



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8.	Future medical expenses	-	10,000/-	Granted
9.	Attendant charges	-	7,500/-	Granted
10.	Damage to clothes	-	1,000/-	Granted
	Total	2,30,648/-	3,43,110/-	Enhanced by Rs.1,12,462/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.2,30,648/- is enhanced to Rs.3,43,110/- 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, 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.2986 of 2006. 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. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

gsa
To

The III Judge,
Court of Small Causes,
(Motor Accident Claims Tribunal),
Chennai.

Copy To
The Section Officer,
V.R Section, High Court, Madras.

+1cc to Mr.G. Balaji Prasad, Advocate SR.No.37874

C.M.A.No.2871 of 2014

VSN II (CO)
GMY (19/08/2021)