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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3026 of 2014

S.Rajendran

..Appellant

Vs.

1.K.Yuvaraj

(R1 remained exparte before the Tribunal)

2.The Reliance General Insurance Company Ltd.

Reliance House, 6th floor

No.6, Haddows Road

Nungambakkam, Chennai-600 034.

..Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.06.2014 made in M.C.O.P.No.2922 of 2012 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.K.Suryanarayanan
for Ms.P.T.Salim Fathima

For R2 : Mr.E.Rajadurai
for Mr.N.Vijayaraghavan

R1 : Exparte

J U D G M E N T

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 09.06.2014 made in M.C.O.P.No.2922 of 2012 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.2922 of 2012 on the file of Motor Accident Claims Tribunal, II Small Causes



Court, Chennai. He filed the said claim petition claiming a sum of Rs.11,00,000/- as compensation for the injuries sustained by him in the accident that took place on 04.03.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 1st respondent, the rider-cum-owner of the motorcycle and directed the 2nd respondent/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.2,23,500/- as compensation to the appellant at the first instance and recover the same from the 1st respondent as the 1st respondent did not possess driving license at the time of accident.

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

5.The learned counsel appearing for the appellant contended that the appellant was working as a Cook and was earning a sum of Rs.12,000/- per month. In the accident, the appellant suffered multiple compound and comminuted fractures in right hand elbow, right leg knee, hip bone and right hand shoulder. Due to the injuries, the appellant could not do the work as he was doing earlier. The appellant examined P.W.2/Doctor, who certified that appellant suffered 40% disability. The Tribunal has awarded a meagre sum of Rs.2,000/- per percentage of disability as against Rs.3,000/- per percentage. The Tribunal without considering the same, fixed a meagre sum of Rs.6,500/- per month as notional income of the appellant and awarded a sum of Rs.45,500/- towards loss of income, which is meagre. The Tribunal ought to have adopted multiplier method to award compensation separately towards loss of earning power. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not let in any evidence to prove that he suffered functional disability and lost his earning power. The appellant has also not produced any documents to prove the avocation and income. In the absence of any material evidence, the Tribunal considering the materials placed before it, granted compensation under different heads, which are not meagre. The total compensation awarded by the Tribunal are excessive. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/

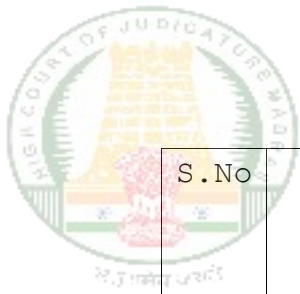


Insurance Company and perused the entire materials on record.

8. From the materials on record, it is seen that the appellant has claimed that he was working as a Cook and was earning a sum of Rs.12,000/- per month. The appellant has not produced any materials to substantiate the same. In the absence of any material evidence with regard to avocation and income of the appellant, the Tribunal fixed a sum of Rs.6,500/- as monthly income of the appellant and awarded a sum of Rs.45,500/- (Rs.6,500/- X 7) towards loss of income for seven months. The accident is of the year 2012 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.9,000/- is fixed as monthly income of the appellant. Thus, a sum of Rs.63,000/- (Rs.9,000/-X7) is awarded towards loss of income for seven months.

8(i). According to the appellant, he suffered multiple compound and comminuted fractures in right hand elbow, right leg knee, hip bone and right hand shoulder in the accident. He examined the Doctor as P.W.2 to prove the nature of injuries sustained by him. P.W.2/Doctor examined the appellant, certified that the appellant suffered 40% disability and issued Ex.P5/Disability certificate. The Tribunal accepting the same, fixed the disability of the appellant at 40% and awarded a sum of Rs.80,000/- towards disability at the rate of Rs.2,000/- per percentage of disability. The accident is of the year 2012 and a sum of Rs.2,000/- awarded by the Tribunal towards per percentage of disability is meagre. 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%).

8(ii) According to the appellant, he has taken treatment as in-patient in Government General Hospital, Chennai, from 04.03.2012 to 28.03.2012 for 25 days and marked the discharge summary as Ex.P2. Considering the nature of injuries and period of treatment, the amount awarded by the Tribunal towards attendant charges is enhanced to Rs.15,000/-. The appellant has not proved that he suffered functional disability and lost his earning capacity. Therefore, the appellant is not entitled to any compensation towards loss of earning power separately. The amounts awarded by the Tribunal under all other heads are not meagre 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 or reduced
1.	Loss of income	45,500	63,000	Enhanced
2.	Transportation	10,000	10,000	Confirmed
3.	Extra nourishment	15,000	15,000	Confirmed
4.	Damage to clothes	1,000	1,000	Confirmed
5.	Medical expenses	10,000	10,000	Confirmed
6.	Attendant charges	7,000	15,000	Enhanced
7.	Loss of amenities	15,000	15,000	Confirmed
8.	Pain and suffering	40,000	40,000	Confirmed
9.	Disability	80,000	1,20,000	Enhanced
	Total	2,23,500	2,89,000	Enhanced by Rs.65,500/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,23,500/- is hereby enhanced to Rs.2,89,000/- 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 at the first instance and recover the same from the 1st respondent. 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. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kj



To

II Judge

Motor Accident Claims Tribunal
Small Causes Court, Chennai.

Copy To

The Section Officer
V.R.Section
High Court, Chennai.

+1cc to M/s.P.T.Salim Fathima, Advocate, S.R.No.41829

C.M.A.No.3026 of 2014

VSN-II (CO)
RGA (03/09/2021)