

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3076 of 2014

S.Christopher Deepak Prabhu .. Appellant/Petitioner

Vs.

1.Andre Greenwood

2.The Oriental Insurance Co. Ltd.

H.O. Oriental House, II floor

Prakasam Salai

Chennai-108.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 04.02.2014 made in M.C.O.P.No.1868 of 2011 on the file of Motor Accident Claims Tribunal, I Special Sub Court, Chennai.

For Appellant : Mr.K.A.Ravindran
for Mr.A.Shanmugaraj

For R2 : Mr.K.Vinod
for R1 : Exparte before the Tribunal

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 04.02.2014 made in M.C.O.P.No.1868 of 2011 on the file of Motor Accident Claims Tribunal, I Special Sub Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.1868 of 2011 on the file of Motor Accident Claims Tribunal, I Special Sub Court, Chennai. He filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.12.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.2,42,000/- as compensation to the appellant.

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 an Accounts Analyst at Shawl Markets Private Limited, Chennai and was earning a sum of Rs.15,855/- per month as per Ex.P9/pay slip. The Tribunal without considering the same, fixed a meagre sum of Rs.4,500/- as monthly income of the appellant. In the accident, the appellant suffered fracture and dislocation of right shoulder, loss of three teeth and multiple injuries all over the body. After the accident, the appellant could not do the work as he was doing earlier. The appellant examined the Ortho Doctor as P.W.2 and Dental Surgeon as P.W.3. P.W.2 and P.W.3/Doctors examined the appellant and certified that the appellant suffered 30% disability for right shoulder joint dislocation and 40% disability for loss of teeth respectively, totally 70% disability. The Tribunal without giving any reason reduced the percentage of disability assessed by P.W.2 and P.W.3/Doctors to 25% and 35% respectively. The Tribunal failed to grant any enhancement towards future prospects. The appellant spent a sum of Rs.1,11,908/- towards medical expenses and to prove the same, he marked the medical bills as Ex.P7. The Tribunal without considering the same, awarded only a sum of Rs.50,000/- towards medical expenses. The appellant lost three teeth in the accident. The Tribunal ought to have awarded a sum of Rs.1,65,000/- towards future medical expenses for fixing artificial teeth. The amounts granted 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 Tribunal rejected Ex.P7 holding that there is no evidence to show that the appellant has undergone treatment for dental problem and awarded a sum of Rs.50,000/- towards medical expenses including future medical expenses, which is proper. Therefore, the appellant is not entitled to any compensation towards future medical expenses. The Tribunal considering the materials placed before it, awarded compensation under different heads, which are not meagre. 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 it is the case of the appellant that he was working as an Accounts Analyst at Shawl Markets Private Limited, Chennai and was earning a sum of Rs.15,000/- per month. The appellant has marked the pay slip as Ex.P9 to prove his income. The Tribunal rejected Ex.P9 on the ground that author of the said document was not examined and fixed a sum of Rs.4,500/- as monthly income of the appellant. The accident is of the year 2010 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.8,000/- per month is fixed as notional income of the appellant. Due to the injuries, the appellant would not have attended his work atleast for a period of six months. Thus, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.48,000/- (Rs.8,000/- X 6).

8(i) According to the appellant, in the accident, he suffered fracture and dislocation of right shoulder, loss of three teeth and multiple injuries all over the body. The appellant examined the Ortho Doctor as P.W.2 and Dental Surgeon as P.W.3. P.W.2 and P.W.3/Doctors examined the appellant and certified that the appellant suffered 30% disability for right shoulder joint dislocation and 40% disability for loss of teeth, totally 70% disability and issued Exs.P12 and P14/Disability certificates. The Tribunal reduced the disability assessed by P.W.2 and P.W.3/Doctors to 25% and 35% respectively on the ground that the disability assessed by the Doctors are on the higher side and awarded a sum of Rs.2,000/- per percentage of disability. The reason assigned by the Tribunal for reducing the disability assessed by the Doctors is not correct. When there is no contra evidence to the evidence of P.W.2 and P.W.3/Doctors on the part of the respondents, the appellant is entitled to compensation for 70% disability. The accident is of the year 2010 and the appellant is entitled to Rs.3,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.2,10,000/- (70% X Rs.3,000/-).

8(ii). According to the appellant, he has taken treatment as in-patient in P.M. Hospital from 05.12.2010 to 09.12.2010 and underwent surgery. The appellant has marked the discharge summary as Ex.P5 to prove the same. The Tribunal has not awarded any compensation towards

attendant charges and loss of amenities. Considering the nature of injuries, disability and period of treatment taken by the appellant, Rs.5,000/- is awarded towards attendant charges and Rs.10,000/- is awarded towards loss of amenities. Though the learned counsel appearing for the appellant contended that the Tribunal ought to have awarded a sum of Rs.1,11,908/- towards medical expenses as per Ex.P7/medical bills, the Tribunal rejected the same on the ground that Ex.P7 is only a certificate issued by the Doctor along with receipts for the said amount and without any treatment records, it cannot be accepted. The said reason given by the Tribunal is valid and proper and therefore, the appellant is not entitled to the said amount. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed.

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	27,000	48,000	Enhanced
2.	Transportation	5,000	5,000	Confirmed
3.	Extra nourishment	10,000	10,000	Confirmed
4.	Medical expenses	50,000	50,000	Confirmed
5.	Pain and suffering	30,000	30,000	Confirmed
6.	Disability	1,20,000	2,10,000	Enhanced
7.	Attendant charges	-	5,000	Granted
8.	Loss of amenities	-	10,000	Granted
	Total	2,42,000	3,68,000	Enhanced by Rs.1,26,000 /-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,42,000/- is hereby enhanced to Rs.3,68,000/- 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. 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/-

Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

kj

To

1.I Special Subordinate Judge
Motor Accident Claims Tribunal
Chennai.

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

+1 cc to Mr.A.Shamugaraj Advocate sr42158
+1 cc to the Elveera Ravindran Advocate sr42004

C.M.A.No.3076 of 2014

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