

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.3174 OF 2014

Abdul @ Abdul Majeed

.. Appellant

Vs.

1.Rajendran

(R1 remained exparte before the Tribunal)

2.Oriental Insurance Co.Ltd.,

Third Party Motor Claims Office,

No.173, J.N.Road,

Thiruvallur-602 001.

.. Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.12.2011 made in M.C.O.P.No.837 of 2009 on the file of the Motor Accident Claims Tribunal, Sub-Court, Ponneri.

For Appellant : Mr.F.TerryChellaraja

For R2 : Mr.S.Arun Kumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 23.12.2011 made in M.C.O.P.No.837 of 2009 on the file of the Motor Accident Claims Tribunal, Sub-Court, Ponneri.

2.The appellant is the claimant in M.C.O.P.No.837 of 2009 on the file of the Motor Accident Claims Tribunal, Sub-Court, Ponneri. He filed the above claim petition, claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident that took place on 20.10.2009.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred only

due to rash and negligent driving by the driver of the lorry belonging to the first respondent and directed the second respondent-Insurance Company, being insurer of the lorry to pay a sum of Rs.93,000/- 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 in the accident the appellant sustained acute injury with skin loss over right thigh for which SSG was done on 06.11.2009 and P.W.4/Doctor assessed the disability suffered by the appellant as 45%, but the Tribunal has awarded a meagre sum of Rs.45,000/- towards disability. The Tribunal ought to have adopted multiplier method for granting compensation towards disability. At the time of accident, the appellant was working as Helper in Sree Kishore Labour Contractors, KK Nagar, Chennai - 78 and was earning a sum of Rs.4,492/- per month, but the Tribunal has awarded a very meagre sum of Rs.13,500/- towards loss of income. Due to the injuries and disability, the appellant has taken treatment in the Government General Hospital, Ponneri, from 20.10.2009 to 28.11.2009 as in-patient for 40 days but the Tribunal has not awarded any amount towards attendant charges, loss of amenities, future medical expenses and damages to clothes. The amounts awarded by the Tribunal towards transportation, extra nourishment, pain and sufferings and medical expenses are meagre and prayed for enhancement of compensation.

6. Per contra, Mr.S.Arun Kumar, learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal accepted the assessment of disability by P.W.4/Doctor and awarded a sum of Rs.45,000/- towards disability at the rate of Rs.1,000/- per percentage of disability, which is not meagre. The appellant failed to prove that he suffered functional disability and hence, he is not entitled to compensation by adopting multiplier method. The appellant has not produced any document to show that he lost his income during the treatment period. Therefore, a sum of Rs.13,500/- awarded by the Tribunal as compensation towards loss of income is excessive. The appellant is not entitled to any amount towards attendant charges, loss of amenities, future medical expenses and damages to clothes. The amounts awarded by the Tribunal under different heads are not meagre and 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 second

respondent/Insurance Company and perused all the materials available on record.

8. From the award passed by the Tribunal, it is seen that in the accident the appellant sustained acute injury with skin loss over right thigh for which SSG was done on 06.11.2009. To prove the same, the appellant examined P.W.4/Doctor. P.W.4/Doctor examined the appellant and certified that appellant suffered 45% disability. The Tribunal accepting the evidence of P.W.4/Doctor and Ex.P21/disability certificate, awarded a sum of Rs.45,000/- (Rs.1,000 X 45% of disability) towards 45% disability by fixing a sum of Rs.1,000/- per percentage of disability. The accident occurred in the year 2009 and the appellant is entitled to a sum of Rs.2,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.90,000/- (Rs.2,000 X 45% of disability). The appellant failed to prove that he suffered functional disability and hence, he is not entitled to compensation by adopting multiplier method.

9. It is the contention of the appellant that he was working as Helper in Sree Kishore Labour Contractors, KK Nagar, Chennai - 78 and was earning a sum of Rs.4,492/- per month. To prove the same, he produced Ex.P12/salary certificate. The Tribunal considering the evidence of appellant and Ex.P12/salary certificate, fixed a sum of Rs.4,500/- per month as notional income of the appellant and awarded compensation towards loss of income for three months. The accident occurred in the year 2009 and the monthly income fixed by the Tribunal is proper. Due to the injuries sustained by the appellant in the accident, he 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.27,000/- (Rs.4,500/- X 6 months). The appellant has taken treatment in the Government General Hospital, Ponneri, from 20.10.2009 to 28.11.2009 as in-patient for 40 days and the Tribunal has not awarded any amount towards attendant charges and loss of amenities. Therefore, the appellant is entitled to a sum of Rs.20,000/- (Rs.500/- X 40 days) towards attendant charges at the rate of Rs.500/- per day and a sum of Rs.20,000/- towards loss of amenities as he suffered 45% disability. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards transportation and extra nourishment are meagre and the same are enhanced to Rs.5,000/- and Rs.15,000/- respectively. The appellant has not produced any medical records to show that he requires amount for future treatment and hence, he is not entitled to compensation towards future medical expenses. The amounts awarded by the Tribunal towards medical expenses and pain and sufferings are just and reasonable and hence, the same are confirmed.

10.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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	13,500/-	27,000/-	Enhanced
2.	Transportation	2,000	5,000	Enhanced
3.	Extra nourishment	2,000	15,000	Enhanced
4.	Medical expenses	5,500/-	5,500/-	Confirmed
5.	Pain & Sufferings	25,000/-	25,000/-	Confirmed
6.	Disability	45,000/-	90,000/-	Enhanced
7.	Loss of amenities	-	20,000/-	Granted
8.	Attendant charges	-	20,000/-	Granted
	Total	Rs.93,000/-	Rs.2,07,500/-	Enhanced by Rs.1,14,500/-

11.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.93,000/- is hereby enhanced to Rs.2,07,500/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the necessary Court fee on the enhanced amount of compensation now determined by this Court. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court together 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 order to the credit of M.C.O.P.No.837 of 2009 on the file of the Motor Accident Claims Tribunal, Sub-Court, Ponneri. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

gbi

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Ponneri.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.22722

+1cc to M/s.M.Malar, Advocate, S.R.No.22278

C.M.A.No.3174 of 2014

BP (CO)
CS/17/06/2021

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