

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 4517 of 2019

Ramesh

.. Appellant/ Petitioner

Vs.

1.R. Srikanth

2.Guruvulu Suruni

2.The Branch Manager,

Oriental Insurance Co. Ltd.,
Having office at Katpadi Road,
Gudiyattam Town,
Vellore District.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 27.02.2019, made in M.C.O.P. No. 91 of 2013, on the file of the Sub Court, (Motor Accident Claims Tribunal), Gudiyatham, Vellore District.

For Appellant : Mr. R. Prabakar

For Respondents : No appearance (for R3)

सत्यमेव जयते

J U D G M E N T

This appeal has been filed seeking enhancement of the compensation granted by the award dated 27.02.2019, made in M.C.O.P. No. 91 of 2013, on the file of the Sub Court, (Motor Accident Claims Tribunal), Gudiyatham, Vellore District.

2.The appellant-claimant filed M.C.O.P. No. 91 of 2013, on the file of the Sub Court, (Motor Accident Claims Tribunal), Gudiyatham, Vellore District, claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 31.03.2013.

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 Auto belonging to the 1st respondent and dismissed the claim petition as against the 2nd respondent. The Tribunal directed the 3rd respondent as insurer of the vehicle to pay a sum of Rs.3,15,255/- as compensation to the appellant at the first instance and recover the same from the 1st respondent, owner of the vehicle.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 27.02.2019, made in M.C.O.P. No. 91 of 2013, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended that the appellant was a Power Loom Worker and was earning a sum of Rs.15,000/- per month. In the accident, he suffered comminuted fracture of supracondylar with intercondylar extension left femur, comminuted fracture left patella, comminuted fracture tibia and fibula left, fracture of left clavicle and has taken treatment as in-patient in Government General Hospital, Chennai from 30.04.2013 to 20.08.2013 and underwent surgery on 30.04.2013. Subsequently, he took treatment at CMC Hospital, Vellore from 16.12.2015 to 19.12.2015. Further, due to the accident and the injuries suffered, the appellant could not do the work as he was doing earlier. The Tribunal considering the nature of injuries, ought to have adopted multiplier method in granting compensation. The Medical Board has assessed the disability of the appellant as 40%. The Tribunal ought to have considered the disability sustained by the appellant and granted more compensation towards disability. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6.Heard learned counsel appearing for the appellant and perused the materials available on record. Though notice has been served on the 3rd respondent-Insurance Company and their name is printed in the cause-list, there is no representation for them either in person or through counsel.

7.It is the contention of the appellant that he suffered comminuted fracture of supracondylar with intercondylar extension left femur, comminuted fracture left patella, comminuted fracture tibia and fibula left, fracture of left clavicle. The Medical Board has assessed 40% disability and the appellant has marked Medical Certificate issued by the Medical Board as Ex.P14 to substantiate the same. From the materials on record, it is seen that the appellant has initially taken treatment in Government General Hospital, Chennai as in-patient from 30.04.2013 to 20.08.2013 and underwent surgery on

30.04.2013. Subsequently, he took treatment at CMC Hospital, Vellore from 16.12.2015 to 19.12.2015. The Tribunal has granted only a meager sum of Rs.5,000/- towards attendant charges. Considering the period of treatment taken by the appellant for more than 5 months, this Court awards a sum of Rs.50,000/- towards attendant charges. The appellant failed to produce any material evidence to show his avocation and he suffered functional disability and lost earning power. In view of the same, he is not entitled for compensation by adopting multiplier method. The amounts awarded by the Tribunal towards transportation to Hospital, extra nourishment, pain and suffering, damages to clothes and loss of amenities are meager. The same are enhanced to Rs.20,000/-, Rs.30,000/-, Rs.50,000/-, Rs.3,000/- and Rs.50,000/- respectively. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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.	Partial permanent disability	1,20,000/-	1,20,000/-	Confirmed
2.	Loss of earning	70,000/-	70,000/-	Confirmed
3.	Transportation	10,000/-	20,000/-	Enhanced
4.	Attendant charges	5,000/-	50,000/-	Enhanced
5.	Extra nourishment	10,000/-	30,000/-	Enhanced
6.	Pain and sufferings	30,000/-	50,000/-	Enhanced
7.	Loss of amenities	20,000/-	50,000/-	Enhanced
8.	Damages to clothes & articles	1,000/-	3,000/-	Enhanced
9.	Future medical bills	20,000/-	20,000/-	Confirmed
10.	Medical bills	29,255/-	29,255/-	Confirmed

	Total	3,15,255/-	4,42,255/-	Enhanced by Rs.1,27,000/-
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8. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.3,15,255/- is enhanced to Rs.4,42,255/- along with interest and costs. The 3rd 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. 91 of 2013 at the first instance and recover the same from the 1st respondent, owner of the vehicle. 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. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.1,27,000/-. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gsa
To

1. The Subordinate Judge,
(Motor Accident Claims Tribunal),
Gudiyatham, Vellore District.

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

+1cc to Mr.R.Prabhakar , Advocate SR.No. 1161

C.M.A.No. 4517 of 2019

A.SK(26/08/2020)

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