

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.136 of 2017

E.Ramesh

.. Appellant

Vs.

1.Meenakshi Sivaraman

2.ICICI Lombard General Insurance Company Limited,
Chhotabhai Centre,
No.140, Nungambakkam High Road,
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 16.08.2016 made in M.C.O.P.No.633 of 2014 on the file of the Motor Accident Claims Tribunal/III Small Causes Court, Chennai.

For Appellants : Mr.R.Nalliyappan

For Respondents : Mrs.R.Sree vidhya for R2

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the Judgment and Decree dated 16.08.2016 made in M.C.O.P.No.633 of 2014 on the file of the Motor Accident Claims Tribunal/III Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.633 of 2014 on the file of the Motor Accident Claims Tribunal/III Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained by him in the accident that took place on 20.01.2014.

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 bearing Registration No.TN 22 CB 1161 belonging to the first respondent and directed the second respondent, as insurer of the vehicle to pay a sum of Rs.3,11,100/- as compensation to the appellant.

4. Not being satisfied with the amount 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 due to the accident, the appellant suffered severe head injuries and multiple rib fracture, left femur fracture and multiple injuries all over the body. P.W.2 - Doctor has assessed the disability of the appellant as 70%. The Tribunal, without considering the evidence of P.W.2-Doctor, the disability certificate issued by the Doctor, medical records and X-Ray, has erroneously reduced the percentage of disability to 35% and awarded only a meagre sum of Rs.1,05,000/- at the rate of Rs.3,000/- per percentage. The Tribunal ought to have adopted multiplier method in awarding compensation instead of adopting percentage method. Due to the accident, the appellant has taken treatment as in-patient at Rajiv Gandhi Government Hospital, Chennai, from 20.01.2014 to 10.02.2014 and again from 17.03.2014 to 14.04.2014. The Tribunal without considering the period of treatment and nature of injuries, awarded a meager amount towards attendant charges. In any event, the total compensation granted by the Tribunal under other heads are also meager and prayed for enhancement of the same.

6. Per contra, learned counsel appearing for the 2nd respondent contended that the Tribunal considering the nature of injury and the treatment taken by the appellant, holding that the assessment of percentage of disability by P.W.2 Doctor is on higher side, has reduced the same to 35% and awarded compensation towards disability. The Tribunal has awarded a sum of Rs.10,584/- towards attendant charges, which is just and reasonable. The total compensation awarded by the Tribunal is 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 and perused the materials available on record.

8. From the materials on record, it is seen that due to the accident, the appellant suffered severe head injuries and fractures in the left leg and over hip. P.W.2 - Doctor has assessed the disability of the appellant as 70% disability. The appellant has marked two discharge summaries as Exs.P2 and P3, medical bills as Ex.P6 and disability certificate as Ex.P8, to prove the injuries sustained by him in the accident and the treatment taken for the same. The Tribunal, without considering

the evidence of P.W.2 Doctor, the disability certificate issued by the Doctor, medical records and X-Ray, has reduced the percentage of disability to 35% stating that the disability assessed by the Doctor is on the higher side and awarded only a sum of Rs.1,05,000/- at the rate of Rs.3,000/- per percentage. The reason given by the Tribunal for reducing the percentage of disability is not proper. The appellant is entitled to compensation for 50% disability at the rate of Rs.3,000/- per percentage of disability. Hence, the amounts granted towards disability is modified to Rs.1,50,000/-. The appellant has taken treatment as in-patient at Rajiv Gandhi Government Hospital, Chennai, from 20.01.2014 to 10.02.2014 and again from 17.03.2014 to 14.04.2014. The Tribunal without considering the period of treatment and nature of injuries, awarded a meagre amount towards attendant charges and the same is hereby enhanced to Rs.50,000/-. The Tribunal has granted a meagre amount as compensation towards damage to clothes and the appellant is entitled to a sum of Rs.3,000/- for the same. 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.	Loss of income	49,464/-	49,464/-	confirmed
2.	Attendant charges	10,584/-	50,000/-	enhanced
3.	Transportation	15,000/-	15,000/-	confirmed
4.	Extra nourishment	40,000/-	40,000/-	confirmed
5.	Damages to clothes	1,000/-	3,000/-	enhanced
6.	Pain & suffering	50,000/-	50,000/-	confirmed
7.	Damage for mental & Physical shock	15,000/-	15,000/-	confirmed

8.	Loss of amenities	25,000/-	25,000/-	confirmed
9.	Disability	1,05,000/-	1,50,000/-	enhanced
	Total	3,11,048/-	3,97,464/-	Enhanced by Rs.86,416/-
	Rounded off to	Rs.3,11,100/-	Rs.3,97,500/-	Rs.86,400/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,11,100/- is hereby enhanced to Rs.3,97,500/- together 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 Court fee, if any on the enhanced amount of compensation. The second respondent-Insurance Company is directed to deposit the enhanced 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/ claimant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vkr

To

1. The III Small Causes Court,
The Motor Accident Claims Tribunal,
Chennai.

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

+1 cc to Mr.Nalliappan Advocate sr1718

+1 cc to M/s.Srividhya Advocate sr2578

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