

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3916 of 2019

T.Hari Vittal Rao

.. Appellant/ Petitioner

Vs.

1.Lukeman Durai

2.The ICICI Lombard General
Insurance Company Ltd.
2nd and 3rd floor, Nungambakkam
Chennai-600 034.

.. Respondents/ Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.04.2018 made in M.C.O.P.No.4079 of 2012 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai.

For Appellant : Mr.K.V.Muthu Visakan
For R2 : Mr.S.Arunkumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 09.04.2018 made in M.C.O.P.No.4079 of 2012 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.4079 of 2012 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai. He filed the said 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 22.07.2012.

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 belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of

Rs.47,800/- 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 fracture on his right foot toe. He examined the doctor as P.W.2, who has assessed the disability of the appellant as 15% and marked the disability certificate as Ex.P14 to prove the injuries. The Tribunal without considering the same, awarded only a lump sum amount of Rs.40,000/- as compensation. Due to the injuries, the appellant has difficulty in walking, climbing steps and squatting. The Tribunal ought to have awarded compensation towards loss of income during the treatment period, transportation, extra nourishment, damage to clothes, loss of amenities and pain & suffering and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the injuries sustained by the appellant are simple in nature and therefore, the Tribunal awarded a lumpsum amount of Rs.40,000/- for the injuries, which is 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 all the materials available on record.

8. It is the contention of the appellant that in the accident, he sustained abrasions over the left shoulder & right knee, laceration on right foot and fracture of right foot toe. The appellant examined Dr.K.J.Mathiazhagan as P.W.2, who assessed the disability of the appellant as 15% and marked the disability certificate as Ex.P14 & wound certificate as Ex.P3 to prove the injuries. The Tribunal awarded a lumpsum amount of Rs.40,000/- as compensation holding that the injuries sustained by the appellant are only simple in nature, P.W.2/Doctor is not the doctor, who treated the appellant and he has not filed any working sheet for assessing the disability. The reason assigned by the Tribunal is not proper and the lump sum amount of Rs.40,000/- awarded by the Tribunal towards injuries is set aside. The respondents did not let in any contra evidence to disprove the evidence let in by appellant, disability assessed by P.W.2/Doctor and the disability certificate marked as Ex.P14. Therefore, the appellant is entitled to compensation for 15%

disability. The accident is of the year 2012 and a sum of Rs.3,000/- is awarded per percentage of disability. Thus, a sum of Rs.45,000/- (Rs.3,000/- X 15%) is awarded towards disability. The Tribunal has not awarded any compensation under other heads except medical expenses. Considering the nature of injuries sustained by the appellant, Rs.20,000/- each are awarded towards pain & suffering, extra nourishment & loss of amenities respectively and Rs.2,000/- towards damage to clothes. Though the appellant has not taken any treatment as in-patient in the hospital, due to the disability, he would have been attended by his family members and hence, a sum of Rs.10,000/- is awarded towards attendant charges. The appellant would have spent some amount for transportation. Hence, a sum of Rs.5,000/- is granted towards transportation. The appellant would have spent some amount for transportation. The appellant has not produced any document to show that he lost income during the treatment period and therefore, he is not entitled to any compensation towards loss of income. The compensation awarded by the Tribunal towards medical expenses is just and reasonable and hence, the same is 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.	Lump sum amount	40,000	-	Set aside
2.	Disability	-	45,000	Granted
3.	Pain and suffering	-	20,000	Granted
4.	Extra nourishment	-	20,000	Granted
5.	Loss of amenities	-	20,000	Granted
6.	Damage to clothes	-	2,000	Granted
7.	Transportation	-	5,000	Granted
8.	Attendant charges	-	10,000	Granted
9.	Medical expenses	7,702	7,702	Confirmed

	Total	47,702 rounded off to 47,800	1,29,702 rounded off to 1,29,800	Enhanced by Rs.82,000/-
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9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.47,800/- is hereby enhanced to Rs.1,29,800/- 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 necessary Court fee, if any, on the enhanced compensation. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.82,000/- enhanced by this Court as per the order of this Court dated 04.10.2019 in C.M.P.No.20158 of 2019 in C.M.A.SR.No.117871 of 2019. The 2nd 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 is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kj

To

1.The Special Sub Court No.II
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

+1cc to Mr.K.Poomalai , Advocate SR.No. 17946

+1cc to Mr. K.V.Muthuvisakan, Advocate SR.No. 17686

C.M.A.No.3916 of 2019

A.SK(21.01.2021)

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