

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1550 of 2017

P.Natarajan

.. Appellant/Petitioner

Vs.

1.D.Shadrack

(R1-Already set exparte in lower court)

2.The New India Assurance Co. Ltd.,
No.46, Moore Street, Chennai - 1. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.08.2013 made in M.C.O.P.No.1907 of 2002 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Ms.S.Ramya for Mr.J.Mahalingam

For R2 : Ms.A.Salomi for Mr.C.Ramesh Babu

R1 : Exparte

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 19.08.2013 made in M.C.O.P.No.1907 of 2002 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

2.The appellant is claimant in M.C.O.P.No.1907 of 2002 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai. He filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.02.2001.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only 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.93,500/- 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/claimant contended that the appellant has sustained fracture in right thigh bone, fracture in both bones in the right knee and injuries all over the body. The appellant took treatment as in-patient in Government General Hospital, Chennai from 10.02.2001 to 28.03.2001, subsequently, took treatment as out-patient for ten months and underwent two surgeries. Due to the fractures and injuries, the appellant is unable to walk, stand and could not do the work without help of others. Therefore, the appellant has suffered functional disability. P.W.2/Doctor has assessed the disability of the appellant as 50%. The Tribunal ought to have adopted multiplier method while awarding compensation towards disability. The Tribunal has not awarded any amount towards mental agony, attendant charges and loss of amenities. The amounts awarded 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 appellant has not proved that he suffered functional disability. In the absence of any documentary evidence to prove that the appellant suffered functional disability, the percentage method applied by the Tribunal is proper. The Tribunal after considering the materials available on record, has awarded just compensation. 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 and perused all the materials available on record.

8. From the materials available on record, it is seen that the appellant has contended that he sustained fracture of right femur and fracture of both bones of right leg lower third and surgery was performed with implantations for fracture of femur, the fracture bones are malunited, right thigh swelling and muscle stiffness and right leg movement is restricted. P.W.2/Doctor has assessed the disability of the appellant as 50%. The Tribunal reduced the disability to 45% holding that the

percentage of disability assessed by the doctor is after a lapse of 12 years and awarded a sum of Rs.67,500/- (Rs.1,500/- x 45%) towards disability at the rate of Rs.1,500/- per percentage of disability. The accident is of the year 2001 and the amount awarded by the Tribunal towards disability is in order. The appellant has not proved that he suffered functional disability and there is loss of earning capacity. Therefore, the percentage method applied by the Tribunal to award compensation for disability is correct. According to the appellant, he was aged 37 years at the time of the accident and was a building contractor and was earning a sum of Rs.10,000/- per month. In the absence of any evidence with regard to loss of earning, the Tribunal has awarded a sum of Rs.6,000/- towards loss of earning, which is meagre. The accident is of the year 2001 and hence, a sum of Rs.3,500/- is fixed as monthly income of the appellant. Due to the injuries, the appellant would not have attended his work atleast for a period of six months. Therefore, the appellant is entitled to a sum of Rs.21,000/- (Rs.3,500/- X 6) towards loss of earning for six months. The appellant has taken treatment as in-patient in Government General Hospital, Chennai from 10.02.2001 to 28.03.2001 and subsequently, has taken treatment as out-patient for ten months and underwent two surgeries. The Tribunal has not awarded any amount towards attendant charges. Hence, a sum of Rs.15,000/- is awarded towards attendant charges. A sum of Rs.5,000/- awarded by the Tribunal towards extra nourishment is meagre and the same is hereby enhanced to Rs.10,000/-. The Tribunal has not awarded any amount towards loss of amenities. A sum of Rs.15,000/- is awarded towards loss of amenities. The amounts awarded by the Tribunal under other heads are just and reasonable and hence the same are 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.	Loss of earning	6,000	21,000	Enhanced
2.	Transport to Hospital	5,000	5,000	Confirmed
3.	Extra nourishment	5,000	10,000	Enhanced
4.	Pain and suffering	10,000	10,000	Confirmed
5.	Disability	67,500	67,500	Confirmed
6.	Attendant charges	-	15,000	Granted

7.	Loss of amenities	-	15,000	Granted
	Total	Rs.93,500/-	Rs.1,43,500/-	Enhanced to Rs.50,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.93,500/- is hereby enhanced by Rs.1,43,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. It is made clear that the appellant/claimant shall not be entitled for any interest for the delay period on the enhanced amount of Rs.50,000/- as per the order of this Court dated 25.04.2017 made in C.M.P.No.10529 of 2016 in C.M.A.SR.No.39862 of 2016. 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/claimant 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-VIII)

//True copy//

Sub Assistant Registrar

mtl

To

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

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

+1cc to Mr.C.Ramesh Babu, Advocate SR.No.1584

+1cc to Mr.J.Mahalingam, Advocate SR.No.2156

C.M.A.No.1550 of 2017

VG II (CO)
GMY (27/08/2020)