

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.214 of 2017

M.Prabhakaran

.. Appellant/ Petitioner

Vs.

1.Baskar

2.Reliance General Insurance Company Limited,

RAI'S Tower,

Plot No.2054, 2nd Avenue, 2nd Floor,

(Next to Senthil Nursing Home),

Anna Nagar, Chennai 600 040.. Respondents/ Respondents

(R1 remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.09.2016 made in M.C.O.P.No.3887 of 2012 on the file of the Motor Accident Claims Tribunal/IV Small Causes Court, Chennai.

For Appellant : Mr.K.V.Muthu Visakan

For Respondents : Mr.S.Arunkumar for R2

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the Judgment and Decree dated 23.09.2016 made in M.C.O.P.No.3887 of 2012 on the file of the Motor Accident Claims Tribunal/IV Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.3887 of 2012 on the file of the Motor Accident Claims Tribunal/IV Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 20.07.2012.

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 van bearing Registration No.TN 10 V 8691 belonging to the first respondent and directed the second respondent, as insurer of

the vehicle to pay a sum of Rs.1,73,100/- 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 the appellant has taken treatment as in-patient in the hospital in different spells from 20.07.2012 to 03.08.2012 and again from 27.09.2012 to 16.10.2012 as per Ex.P2/ Discharge summary. The appellant suffered severe head injuries and P.W.2 - Doctor has assessed disability of the appellant as 50%. The Tribunal 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 has not awarded any amount for loss of earning and the amounts awarded by the Tribunal under different heads are also meagre and prayed for enhancement of compensation.

6. Per contra, learned counsel appearing for the second respondent/ Insurance Company contended that the disability certificate given by P.W.2/Doctor is on the higher side. The Tribunal has considered the evidence of P.W.2/Doctor and reduced the percentage of disability to 35%, which is in order. In any event, the amounts awarded by the Tribunal under other heads need not be enhanced with and prayed for dismissal of the appeal.

7. Heard learned counsel appearing for the appellant as well as the 2nd respondent / Insurance Company and perused the materials available on record.

8. It is the contention of the appellant that he suffered severe injury in left frontal extra axial haematoma and admitted in the hospital as in-patient from 20.07.2012 to 03.08.2012 and again from 27.09.2012 to 16.10.2012. He has marked the discharge summaries and documents as Exhibits to prove the injuries sustained by him in the accident and the treatment taken for the same. P.W.2/ Doctor has assessed the disability of the appellant as 50%. To substantiate the same, the appellant has marked Ex.P9/disability certificate. The Tribunal, without considering the evidence of P.W.2/Doctor, the disability certificate issued by the Doctor, medical records and CT-scan, has erroneously reduced the percentage of disability to 35% on the ground that the disability assessed by the Doctor is not for the whole body and awarded only a sum of Rs.1,05,000/- at the rate of Rs.3,000/- per

percentage. The said reason given by the Tribunal is not correct. 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 amounts granted by the Tribunal towards pain and sufferings, extra nourishment, transportation, damages to the clothes, attendant charges and loss of amenities are very meagre and the same are hereby enhanced to Rs.50,000/-, Rs.35,000/-, Rs.15,000/-, Rs.2,000/-, Rs.35,000/- and Rs.25,000/- respectively. The amounts awarded by the Tribunal towards medical expenses and future medical expenses 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
1.	Disability	1,05,000/-	1,50,000/-	enhanced
2.	Pain & sufferings	35,000/-	50,000/-	enhanced
3.	Extra nourishment	5,000/-	35,000/-	enhanced
4.	Damages to clothes	750/-	2,000/-	enhanced
5.	Attendant charges	6,800/-	35,000/-	enhanced
6.	Loss of amenities	5,000/-	25,000/-	enhanced
7.	Transportation	5,000/-	15,000/-	enhanced
8.	Medical expenses	7,500/-	7,500/-	confirmed
9.	Future medical expenses	3,000/-	3,000/-	confirmed
	Total	1,73,050/-		
	Rounded off to	Rs.1,73,100/-	Rs.3,22,500/-	Enhanced by Rs.1,49,400/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,73,100/- is hereby enhanced to Rs.3,22,500/- together with interest at the rate of 7.5% per annum (except for

Rs.3,000/- awarded towards future medical expenses) from the date of petition till the date of deposit. No interest for the dismissal for default period from 27.02.2014 to 13.03.2015. 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.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

vk
To

- 1.The IV Small Causes Court,
The Motor Accident Claims Tribunal,
Chennai.
- 2.The Section Officer,
V.R Section,
High Court, Madras.

+2ccs to Mr.S.Arun Kumar , Advocate SR.No. 2302,1737
C.M.A.No.214 of 2017
A.SK (04/12/2020)

सत्यमेव जयते

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