

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 3063 of 2017

K. Sugunesan

.. Appellant/ Petitioner

Vs.

1.Priyakannan (Exparte)

2.The New India Insurance Co. Ltd.,
No.232, NSC Bose Road,
LIC, Building,
Chennai 600 001.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 17.03.2017, made in M.C.O.P. No. 1568 of 2014, on the file of the IV Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. T.G. Ravichandran

For Respondents: Mr. K. Vinod (for R2)
R1: Exparte

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 17.03.2017, made in M.C.O.P. No. 1568 of 2014, on the file of the IV Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-claimant filed M.C.O.P. No. 1568 of 2014, on the file of the IV Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.8,50,000/- as compensation for the injuries sustained by him in the accident that took place on 31.12.2013.

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 Lorry belonging to the 1st respondent and directed the 2nd respondent as insurer

of the vehicle to pay a sum of Rs.1,54,600/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 17.03.2017, made in M.C.O.P. No. 1568 of 2014, the appellant has come out with the present appeal.

5. Learned counsel appearing for the appellant contended that at the time of accident, the appellant was working as a Lorry Driver and also was a partner of M/s. Sri Amma Logistics, Tondiarpet, Chennai and was earning a sum of Rs.25,000/- per month. Due to the accident, the appellant sustained fracture viz., left radius and right leg knee fracture and took treatment as in-patient in Karthik Hospital, Thiruvottiur, Chennai from 31.12.2013 to 12.01.2014 and produced Ex.P2 - Discharge Summary to prove the same. P.W.2 - Doctor assessed disability of the appellant as 55% and issued disability certificate which is marked as Ex.P11. The Tribunal without assigning any reasons, reduced the percentage of disability suffered by the appellant from 55% to 30% and awarded meagre amount as compensation towards disability. The amounts awarded by the Tribunal towards loss of income, loss of amenities, extra nourishment, pain and suffering, future medical expenses and damages to clothes are meagre and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that in the absence of any evidence by the appellant to prove that he suffered functional disability, the Tribunal rightly considering the nature of injuries and evidence of P.W.2- Doctor, reduced the percentage of disability from 55% to 30%, on the ground that P.W.2 Doctor has not filed any worksheet to prove the assessment and awarded compensation under the head, disability by applying percentage method. The Tribunal has awarded compensation under different heads, which are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

8. Heard learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

9. It is the contention of the appellant that due to the accident, he suffered sustained fracture viz., left radius and right leg knee fracture. P.W.2 - Doctor assessed disability of the appellant as 55% and issued disability certificate which is marked as Ex.P11. The Tribunal reduced the same to 30% on the

ground that the Doctor has not assessed the disability for the whole body and has not filed any worksheet and guidelines to substantiate the assessment of disability. The said reasoning is erroneous. Considering the nature of injuries and period of treatment, the appellant is entitled to compensation for 55% disability. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.1,65,000/- (55% x Rs.3,000/-). Due to the accident, the appellant took treatment as in-patient in Karthik Hospital, Thiruvottiyur, Chennai from 31.12.2013 to 12.01.2014 and produced Ex.P2 - Discharge Summary to prove the same. The Tribunal has awarded meagre amount towards extra nourishment, attendant charges, damages to clothes and loss of amenities. Considering the nature of injuries and the period of treatment taken, the amounts awarded by the Tribunal towards extra nourishment, transportation, attendant charges, damages to clothes and loss of amenities are enhanced to Rs.15,000/-, Rs.5,000/- Rs.15,000/-, Rs.2,000/- and Rs.10,000/- respectively.

9(a) According to the appellant, at the time of accident, he was working as a Lorry Driver and also was a partner of M/s. Sri Amma Logistics, Tondiarpet, Chennai and was earning a sum of Rs.25,000/- per month. He has failed to prove the same. The Tribunal has fixed a meagre sum of Rs.6,500/- per month as notional income of the appellant. The accident is of the year 2013. In the absence of any material evidence to prove the avocation and income of the appellant, a sum of Rs.9,000/- per month is fixed as the notional income of the appellant. Due to the injuries, the appellant would not have worked atleast for a period of six months. Hence, the amounts awarded by the Tribunal towards loss of income is modified to Rs.54,000/- (Rs.9,000/- x 6 months). 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.	Disability	90,000/-	1,65,000/-	Enhanced
2.	Pain and suffering	30,000/-	30,000/-	Confirmed
3.	Extra nourishment	3,000/-	15,000/-	Enhanced
4.	Attendant charges	2,600/-	15,000/-	Enhanced
5.	Transport to Hospital	3,000/-	5,000/-	Enhanced

6.	Damages to clothes	750/-	2,000/-	Enhanced
7.	Loss of amenities	3,000/-	10,000/-	Enhanced
8.	Future medical expenses	3,000/-	3,000/-	Confirmed
9.	Medical expenses	6,228/-	6,228/-	Confirmed
10.	loss of income	13,000/-	54,000/-	Enhanced
	Total	1,54,578/- rounded off to 1,54,600/-	3,05,228/- rounded off to 3,05,300/-	Enhanced by Rs.1,50,700/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,54,600/- is enhanced to Rs.3,05,300/- along with interest and costs. The 2nd 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. 1568 of 2014. 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.1,50,700/-. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gsa
To

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

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

+lcc to Mr.K.Vinod, Advocate SR.No. 7135

+lcc to Mr.T.G.Ravichandran , Advocate SR.No. 7383

C.M.A. No. 3063 of 2017

A.SK(08/09/2020)