

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.448 of 2017

Jaganathan

... Appellant /Petitioner

Vs.

1.M/s.Khivraj Motors Pvt Ltd,
No.66, Greams Road,
Chennai-6

2.National Insurance Co.Ltd,
Divisional Office-1,
No.66, Greams Road,
Chennai-6

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 17.02.2014 made in M.C.O.P.No.624/2011 on the file of Motor Accident Claims Tribunal, Sub Court , Ponneri.

For Appellant : Ms.A.Subadra
for Ms.M.Malar

For R2 : Mr.S.Arunkumar
For 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 17.02.2014 made in M.C.O.P.No.624/2011 on the file of Motor Accident Claims Tribunal, Sub Court Judge, Ponneri.

2.The appellant is claimant in M.C.O.P.No.624/2011 on the file of Motor Accident Claims Tribunal, Subordinate Judge, Ponneri. He filed the said claim petition claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.10.2011.

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 Maruthi Omni Van belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said Maruthi Omni Van to pay a sum of Rs.1,31,500/- 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 was aged 30 years at the time of accident and was earning a sum of Rs.15,000/- per month by working as acting driver in Free Lancer. Due to the accident, the appellant sustained fracture of right temporal EDH and left frontal SAH, left temporal contusion and diffuse external. P.W.2/Doctor has assessed the disability of the appellant as 70%, but the Tribunal reduced the disability to 50% and granted compensation. The Tribunal has not awarded any compensation towards attendant charges and damages to clothes. 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 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/Insurance Company and perused all the materials available on record.

8. It is contention of the appellant that he was aged 30 years at the time of accident and was earning a sum of Rs.15,000/- per month by working as acting driver. The appellant has not filed any document to prove the same. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal has fixed a sum of Rs.3,000/- per month as notional income and granted a sum of Rs.4,500/- towards loss of income for a period of one and half months. The accident is of the year 2011 and the monthly income fixed by the Tribunal is meager. Hence, a sum of Rs.10,000/- is fixed as monthly income of the appellant. Due to the Head injury, the appellant would not have attended his work at least for a period of three months. Therefore, the appellant is entitled to a sum of Rs.30,000/- (Rs.10,000/- X 3) towards loss of income for three months. In the accident, appellant

sustained fracture of right temporal EDH and left frontal SAH, left temporal contusion and diffuse external. P.W.2/Doctor has assessed the disability of the appellant as 70%. The Tribunal reduced the disability to 50% holding that disability assessed by P.W.2 Doctor is on the higher side and awarded a sum of Rs.1,00,000/- at the rate of Rs.2000/- per percentage of disability. The reason given by the Tribunal for reducing disability is valid. The accident is of the year 2011 and the appellant is entitled to a sum of Rs.3000 per percentage of disability. Hence, a sum of Rs.1,50,000/- (3000x50%) is awarded towards disability. According to the appellant, he took treatment as in-patient in Government General Hospital, Chennai from 06.10.2011 to 17.10.2011, but the Tribunal has not awarded any amount towards Attendant Charges. Hence a sum of Rs. 10,000/- is awarded towards Attendant Charges. A sum of Rs.2000/- each awarded by the Tribunal towards transportation & extra nourishment are meagre and hence, the same are hereby enhanced to Rs.5,000/- each towards transportation and extra nourishment respectively. The Tribunal has not awarded any amount towards loss of amenities. Considering the nature of injuries and disability sustained by the appellant, a sum of Rs.10,000/- is awarded towards loss of amenities. The amounts awarded by the Tribunal under all the other heads are just and reasonable and hence the same are hereby confirmed.

9.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation, more than the amount claimed by the claimants. 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.	Permanent disability	1,00,000	1,50,000	Enhanced
2.	Transport to Hospital	2,000	5000	Enhanced
3.	Loss of income during the treatment period	4,500	30,000	Enhanced
4.	Medical expenses	3,000	3,000	Confirmed

5.	Pain and Sufferings	20,000	20,000	Confirmed
6.	Extra Nourishment	2,000	5,000	Enhanced
7.	Attendant charges	...	10,000	Granted
8.	Loss of amenities	...	10,000	Granted
	Total	Rs.1,31,500/-	Rs.2,33,000/-	Enhanced to Rs.1,01,500/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,31,500/- is hereby enhanced to Rs.2,33,000/- 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. 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

//True Copy//

Sub Assistant Registrar

To

The Subordinate Judge,
Motor Accident Claims Tribunal, Ponneri.

Copy to

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

+lcc to M/s.M.Malar, Advocate Sr.8537
+lcc to Mr.S.Arunkumar, Advocate Sr.8678

C.M.A.No.448 of 2017

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