

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.46 of 2017

P.Thirumal

.. Appellant/Claimant

Vs.

1.P.Perumal

2.The Manager,

United India Insurance Company Limited,
No.134, Greams Road,
Silingi Buildings, 4th Floor,
Chennai-600 006.

.. 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 14.09.2016 made in M.C.O.P.No.6436 of 2013 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.A.A.Venkatesan

For Respondents: Mr.D.Bhaskaran for R2
No Appearance for R1

J U D G M E N T

This Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 14.09.2016 made in M.C.O.P.No.6436 of 2013 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

2.The appellant is the claimant in M.C.O.P.No.6436 of 2013 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai. He filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.11.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle bearing Registration No.TN 03 J 2248 belonging to the first respondent and directed the second respondent, as insurer of the vehicle to pay a sum of Rs.2,44,000/- 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 he was working as a mason and was earning a sum of Rs.600/- per day. The accident is of the year 2012 and the Tribunal without considering the evidence of P.W.1 and the fact that the appellant was bed ridden for a year after the accident, has awarded meagre amount of Rs.25,250/- towards loss of income. In the accident, he suffered serious head injury with skull fracture, fracture Right fronto parietal acute SDH with contusion and multiple injuries all over the body, P.W.2/Dr.K.J.Mathiazhagan has assessed the disability of the appellant as 45% and issued Ex.P12/disability certificate. The Tribunal without considering the evidence of P.W.2, has reduced the percentage of disability to 40% and awarded only a sum of Rs.1,20,000/- at the rate of Rs.3,000/- per percentage. Due to the injuries, the appellant has lost his earning capacity and the Tribunal ought to have adopted multiplier method for awarding compensation towards permanent disability. The Tribunal has failed to award any amount towards loss of earning and loss of future loss of income. Due to the accident, the appellant has taken treatment as in-patient at Government Stanley Hospital from 02.11.2012 to 12.11.2012 and underwent surgery on 02.11.2012. The Tribunal without considering the period of treatment and nature of injuries, has granted a meagre amount towards attendant charges and pain and sufferings. The Tribunal has failed to award any amount towards loss of amenities 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 Tribunal has reduced the percentage of disability from 45% to 40% on the ground that the disability assessed by P.W.2/Doctor is on the higher side. 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 learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent / Insurance Company 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 was working as a mason and was earning a sum of Rs.600/- per day. The Tribunal erroneously awarded a sum of Rs.250/- per day and granted Rs.25,250/- towards loss of income for 101 days. The accident is of the year 2012. Considering the evidence of P.W.1 and Ex.P9/Identity Card, a sum of Rs.7,500/- is fixed as monthly income of the appellant. Due to the injuries, the appellant would not have worked at least for a period of twelve months. Hence, a sum of Rs.90,000/- (Rs.7,500/- x 12) is awarded towards loss of income for a period of twelve months. In the accident, the appellant sustained serious head injury with skull fracture, fracture Right fronto pario acute SDH with contusion and multiple injuries all over the body. He has examined Dr.K.J.Mathiazhagan as P.W.2, who assessed the disability of the appellant as 45% and marked Ex.P12/disability certificate to prove the same. The Tribunal reduced the percentage of disability assessed by P.W.2/Doctor to 40% holding that the percentage of disability assessed by P.W.2 is on the higher side, which is not proper. The amount per percentage of disability fixed by the Tribunal is proper. The appellant is entitled to compensation for 45% disability at the rate of Rs.3,000/- per percentage of disability. Accordingly, a sum of Rs.1,35,000/- (Rs.3,000/- X 45%) is awarded towards permanent disability. According to the appellant, he took treatment as in-patient in Government Stanely Hospital from 02.11.2012 to 12.11.2012 and underwent surgery on 02.11.2012. The Tribunal has awarded only a sum of Rs.2,750/- towards attendant charges. Considering the nature of injuries and period of treatment taken by the appellant, the amount granted by the Tribunal is enhanced to Rs.20,000/- towards attendant charges. The amounts awarded by the Tribunal towards transportation, extra nourishment and damage to clothes are meagre and the same are enhanced to Rs.20,000/-, Rs.25,000/- and Rs.2,000/- respectively. The Tribunal has not awarded any amount towards loss of amenities. This Court awards a sum of Rs.25,000/- towards loss of amenities. The appellant has not produced any document to show that he has taken continuous treatment after discharge and therefore, the appellant is not entitled to any amount towards future loss of income. 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
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1.	Loss of income	25,250/-	90,000/-	Enhanced
2.	Attendant charges	2,750/-	20,000/-	Enhanced
3.	Transportation	5,000/-	20,000/-	Enhanced
4.	Extra nourishment	15,000/-	25,000/-	Enhanced
5.	Damage to clothes	1,000/-	2,000/-	Enhanced
6.	Pain & sufferings	40,000/-	40,000/-	Confirmed
7.	Damages for mental & physical shock	10,000/-	10,000/-	Confirmed
8.	Disability	1,20,000/-	1,35,000/-	Enhanced
9.	Disfigurement	25,000/-	25,000/-	Confirmed
10.	Loss of amenities	-	25,000/-	Granted
	Total	2,44,000/-	3,92,000/-	Enhanced by Rs.1,48,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,44,000/- is hereby enhanced to Rs.3,92,000/- 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

vkr

To

The Motor Accident Claims Tribunal,
III Court of Small Causes, Chennai.

Copy To

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

+1cc to Mr.A.A.Venkatesan, Advocate, S.R.No. 2044

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No. 1877

C.M.A.No.46 of 2017

SSI (CO)
GN(11/12/2020)



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