

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.48 of 2017

S.Haridoss

.. Appellant

Vs.

1.Nabisha Bivi

2.Oriental Insurance Co. Ltd.,  
Motor Third Party Claim Cell,  
No.115, 2<sup>nd</sup> Floor, Prakasam Salai,  
Broadway, Chennai - 108. .. Respondents

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.5885 of 2013 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

R1 : No appearance

For R2 : Mr.D.Bhaskaran

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 14.09.2016 made in M.C.O.P.No.5885 of 2013 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.5885 of 2013 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. He filed the 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 14.08.2013.

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 auto and directed the 2<sup>nd</sup> respondent/Insurance Company being insurer of the said auto to pay a sum of Rs.1,34,200/- 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 after the accident, the appellant could not use his left hand. P.W.2/Doctor has assessed the disability of the appellant as 50%, but the Tribunal reduced the disability to 25%. The Tribunal has not awarded any amount towards loss of earning power and ought to have fixed 50% towards loss of earning power. 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 2<sup>nd</sup> 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 2<sup>nd</sup> respondent and perused all the materials available on record.

8.From the materials available on record, it is seen that the appellant has suffered fracture of shaft humerus left. P.W.2/Doctor has assessed the disability of the appellant as 50%. The Tribunal has reduced the percentage of disability to 25% on the ground that P.W.2/Doctor has not assessed the percentage of disability to whole body and awarded a sum of Rs.75,000/- at the rate of Rs.3,000/- per percentage of disability. The reason given by the Tribunal for reducing the percentage of disability is not correct. The appellant is entitled to compensation for 40% disability. A sum of Rs.1,20,000/- (40% x Rs.3,000/-) is awarded towards disability by awarding a sum of Rs.3,000/- per percentage of disability. According to the appellant, he was a worker in Tablet India Private Ltd., at the time of the accident and was earning a sum of Rs.17,500/- per month. To prove the avocation and income of

the appellant, he has produced Ex.P12/company's identity card, Ex.P13/salary slip, Ex.P14/employers certificate and Ex.P15/bank statement. The Tribunal has fixed a sum of Rs.16,010/- as monthly income of the appellant by accepting the documents marked as Ex.P15/bank statement stating that August (2013) month salary was only Rs.16,010/- fixed monthly income as Rs.16,010/- and awarded a sum of Rs.16,010/- (Rs.16,010/- X 1) towards loss of income for one month. The accident has occurred in the year 2013 and the monthly income fixed by the Tribunal is proper. Considering the nature of injuries sustained by the appellant, he would not have attended his work atleast for a period of two months. Hence, a sum of Rs.32,020/- (Rs.16,010/- X 2) is awarded towards loss of income for two months. The appellant took treatment as in-patient in Ezhil Hospital from 14.08.2013 to 19.08.2013 and also took treatment as in-patient in Chettinad Hosptial from 29.04.2014 to 05.05.2014 and subsequently, he took treatment as out-patient on various dates. The amounts awarded by the Tribunal towards extra nourishment, attendant charges and loss of amenities are meagre. Considering the period of treatment and nature of injuries sustained by the appellant, this Court enhance the same to Rs.25,000/-, Rs.10,000/- and Rs.10,000/- towards extra nourishment, attendant charges and loss of amenities respectively. 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.   | Disability            | 75,000                          | 1,20,000                          | Enhanced                                          |
| 2.   | Pain and suffering    | 25,000                          | 25,000                            | Confirmed                                         |
| 3.   | Extra nourishment     | 2,500                           | 25,000                            | Enhanced                                          |
| 4.   | Transport to hospital | 2,500                           | 2,500                             | Confirmed                                         |
| 5.   | Damages to clothes    | 500                             | 500                               | Confirmed                                         |
| 6.   | Attendant charges     | 2,600                           | 10,000                            | Enhanced                                          |
| 7.   | Medical expenses      | 5,000                           | 5,000                             | Confirmed                                         |

|     |                         |                                                     |               |                            |
|-----|-------------------------|-----------------------------------------------------|---------------|----------------------------|
| 8.  | Future medical expenses | 2,500                                               | 2,500         | Confirmed                  |
| 9.  | Loss of income          | 16,010                                              | 32,020        | Enhanced                   |
| 10. | Loss of amenities       | 2,500                                               | 10,000        | Enhanced                   |
|     | Total                   | Rs.1,34,110/-<br>is rounded off to<br>Rs.1,34,200/- | Rs.2,32,520/- | Enhanced to<br>Rs.98,320/- |

9. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,34,200/- is hereby enhanced to Rs.2,32,520/- 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 2<sup>nd</sup> 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-VI)

//True copy//

Sub Assistant Registrar

mtl

To

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

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

+1cc to Mr.K.Varadha Kamaraj, Advocate SR.No.1474

+1cc to Mr.D.Bhaskaran, Advocate SR.No.1385

C.M.A.No.48 of 2017

KS (CO)  
GMY (27/08/2020)