

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.497 of 2017

K.T.Venkatesan

.. Appellant /Petitioner

Vs.

1.Ambika

2.Universal Sompo General Insurance Company Limited,
Capital Towers, 5th Floor, No.554 & 555, Anna Salai,
Teynempet, Chennai - 600 018. .. Respondents/Respondents

(1st respondent remained exparte before Tribunal.
Hence, notice dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.07.2013 made in M.C.O.P.No.2 of 2011 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj
For R2 : Ms.Vijayakamala

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 24.07.2013 made in M.C.O.P.No.2 of 2011 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.2 of 2011 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.3,25,000/- as compensation for the injuries sustained by him in the accident that took place on 31.07.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the

rash and negligent driving by the driver of the car belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the car to pay a sum of Rs.1,17,000/- as compensation to the appellant/claimant.

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 P.W.2/Doctor assessed the percentage of disability suffered by the appellant as 30% but the Tribunal reduced the same to 25% and awarded a meagre sum of Rs.50,000/- as compensation towards disability. The appellant was working as Senior Supervisor in GRT Grand Hotel, Chennai and was earning a sum of Rs.12,000/- per month, whereas, the Tribunal fixed a meagre sum of Rs.7,000/- per month as notional income of the appellant and awarded only Rs.21,000/- towards loss of income. The Tribunal has not awarded any amount towards loss of earning power, loss of amenities and attendant charges. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, Ms. Vijayakamala, learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal rightly reduced the percentage of disability assessed by P.W.2/Doctor on the ground that P.W.2/Doctor has not examined the petitioner as per scientific method. She further contended that the appellant has not suffered any fracture and he sustained only simple injuries. The appellant has not produced any material evidence to prove his avocation and income. In the absence of any material evidence, a sum of Rs.7,000/- per month fixed by the Tribunal as notional income of the appellant is excessive. The appellant is not entitled to any amount towards loss of earning power, loss of amenities and attendant charges. The amounts awarded by the Tribunal under different heads are not meagre and 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 second respondent and perused the entire materials on record.

8. From the materials available on record, it is seen that P.W.2/Doctor certified that appellant suffered 30% partial permanent disability for dislocation of right elbow. The Tribunal reduced the percentage of disability suffered by the

appellant to 25% on the ground that P.W.2/Doctor has not examined the appellant as per scientific method and also assessment of disability by P.W.2/Doctor appears to be on the higher side. The Tribunal is not the authority to reduce the percentage of disability on the ground that percentage of disability assessed by P.W.2/Doctor appears to be on the higher side. The reason given by the Tribunal for reducing the percentage of disability is not correct. The appellant is entitled to compensation for 30% disability. The accident occurred in the year 2010 and the Tribunal has awarded a sum of Rs.2,000/- per percentage of disability, which is meagre. The appellant is entitled to compensation for 30% disability at the rate of Rs.3,000/- per percentage of disability. In view of the above, the compensation awarded by the Tribunal towards disability is modified to Rs.90,000/- [Rs.3,000/- X 30% of disability]. 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	50,000/-	90,000/-	Enhanced
2.	Pain and sufferings	25,000/-	25,000/-	Confirmed
3.	Medical expenses	5,000/-	5,000/-	Confirmed
4.	Extra nourishment	5,000/-	5,000/-	Confirmed
5.	Loss of income	21,000/-	21,000/-	Confirmed
6.	Damage to clothes	1,000/-	1,000/-	Confirmed
7.	Mental agony	5,000/-	5,000/-	Confirmed
8.	Transportation	5,000/-	5,000/-	Confirmed
	Total	Rs.1,17,000/-	Rs.1,57,000/-	enhanced by Rs.40,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,17,000/- is hereby enhanced to Rs.1,57,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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 to the credit of M.C.O.P.No.2 of 2011 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. It is made clear that the appellant is not entitled to any interest on Rs.40,000/- the amount now enhanced by this Court, as per the order of this Court dated 03.02.2017 made in C.M.P.No.9176 of 2016 in C.M.A.SR.No.40144 of 2016. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

2.The Section Officer,
VR Section,
High Court,
Madras.

+1 cc to Ms.Vijayakamala Advocate sr2127
+1 cc to Mr.K.Varadakamaraj Advocate sr2655

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C.M.A.No.497 of 2017

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