

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.69 of 2017

E.Viknesh

.. Appellant/Petitioner

Vs.

1.M.Senthilkumar

2. Reliance General Insurance
Company Ltd.,
No.20/54, Royes Towers,
II Avenue, Anna Nagar,
Chennai-40.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.07.2016 made in M.C.O.P.No.5893 of 2013 on the file of the Motor Accident Claims Tribunal, V Judge Small Causes Court, Chennai.

For Appellant : Mr.N.M.Elumalai

For Respondents: Mr.S.Arunkumar for R2
No Appearance for R1

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 06.07.2016 made in M.C.O.P.No.5893 of 2013 on the file of the Motor Accident Claims Tribunal/V Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.5893 of 2013 on the file of the Motor Accident Claims Tribunal, V 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 23.06.2013.

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 car belonging to the first respondent and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of

Rs.2,48,000/- as compensation to the appellant at the first instance and recover the same from the 1st respondent, owner of the vehicle.

4. Not being satisfied with the amount 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 in the accident the appellant suffered both bone fracture of right leg and fracture in right leg femur. Due to the fracture, he could not continue his work as earlier. The appellant examined P.W.2/Doctor to prove the nature of injuries and disability suffered by him. The Tribunal ought to have applied multiplier method and granted compensation. The Tribunal erroneously reduced the percentage of disability from 65% to 30% and awarded a meagre sum of Rs.90,000/- towards disability. The appellant was working as operator (paper cup manufacture) and was earning a sum of Rs.7,000/- per month. The Tribunal has fixed a sum of Rs.7,000/- as notional income of the appellant per month and awarded a meagre sum of Rs.42,000/- (Rs.7,000/- x 6 months) towards loss of income. The Tribunal failed to award any amount under the head of loss of earning power. The compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, Mr.S.Arun kumar, learned counsel appearing for the second respondent- Insurance Company contended that in the absence of any evidence with regard to income of the appellant, the Tribunal has fixed notional income of the appellant at Rs.7,000/- per month and awarded a sum of Rs.42,000/- (Rs.7,000/- x 6) towards loss of income. The said amount is excessive and the Tribunal has given valid reason for reducing the percentage of disability. The appellant has not proved by any acceptable evidence that he could not do any work as he was doing earlier and he suffered 100% loss of earning capacity. Based on the evidence let in by the appellant, the Tribunal awarded excessive compensation under different heads 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- Insurance Company and perused the entire materials on record.

8. From the materials available on record, it is seen that the appellant has contended that he suffered fracture in the right leg and right femur. To substantiate the injuries sustained by him, the appellant has examined P.W.2/Doctor, who deposed about the nature of injuries and treatment taken by the appellant and assessed disability as 65%. But the Tribunal fixed

the disability at 30% and awarded Rs.90,000/- towards disability at the rate of Rs.3,000/- per percentage, on the ground that the disability assessed by the Doctor is on the higher side. The said reasoning is erroneous. Considering the nature of injuries, evidence of P.W.2/Doctor and materials on record, the appellant is entitled to compensation for 65% disability at the rate of Rs.3,000/- per percentage. Thus, a sum of Rs.1,95,000/- (Rs.3,000/- x 65) is awarded towards disability at the rate of Rs.3,000/- per percentage for 65% disability. The appellant has not proved that he suffered functional disability. In the absence of any material evidence to substantiate the said contention, he is not entitled to compensation by applying multiplier method. The appellant has contended that he was working as an operator in paper cup manufacturing company and was earning a sum of Rs.7,000/- per month. The appellant produced Ex.P6, Certificate issued by his employer to prove the same. The Tribunal following the judgment of the Hon'ble Apex Court reported in 2014 ACJ 627 (Syed Sadiq etc., vs. Divisional Manager, United India Insurance Company Limited), rightly fixed monthly income of the appellant at Rs.7,000/- per month but awarded only a sum of Rs.42,000/- towards loss of income for a period of six months, which is meagre. The appellant has taken treatment in Government Royapettah Hospital as in-patient from 23.06.2013 to 12.07.2013 and again from 27.09.2013 to 01.10.2013. Considering the age and nature of injuries, the appellant would not have attended his work for atleast nine months. Hence, a sum of Rs.63,000/- (Rs.7,000/- x 9months) is awarded towards loss of income. The Tribunal has granted a sum of Rs.20,000/- altogether towards transportation and extra nourishment and the same is meagre. The appellant is entitled to a sum of Rs.10,000/- towards transportation and Rs.25,000/- towards extra nourishment. The Tribunal has awarded a meagre sum of Rs.6,250/- towards attendant charges and the same is hereby enhanced to Rs.25,000/-. The Tribunal has failed to award any amount towards loss of damage to clothes and a sum of Rs.3,000/- is awarded for loss of damage to clothes. The amounts granted by the Tribunal under the other heads are just and reasonable and hence, they 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
1.	Transportation & Extra nourishment	20,000/-	10,000/- 25,000/-	enhanced

2.	Attender charges	6,250/-	25,000/-	enhanced
3.	Disability	90,000/-	1,95,000/-	enhanced
4.	Loss of earning	42,000/-	63,000/-	enhanced
5.	Damages for pain, suffering and trauma	50,000/-	50,000/-	confirmed
6.	Loss of amenities	40,000/-	40,000/-	confirmed
7.	Damage to clothes	-	3,000/-	granted
	Total	Rs.2,48,250/-	Rs.4,11,000/-	enhanced by Rs.1,63,000/-
	Rounded off to	Rs.2,48,000/-	-	-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,48,000/- is hereby enhanced to Rs.4,11,000/- 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 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, at the first instance and recover the same from the first respondent. 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 by making necessary applications before the Tribunal. No costs.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

To

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

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

+1 CC to Mr.S.Arun Kumar, Advocate sr 2306.

+1 CC to Mr.N.M.Elumalai, Advocate sr 1749.

C.M.A.No.69 of 2017

RSK (CO)
SP (20/03/2020)



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