

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 4684 of 2019

Kumaravel

.. Appellant/Petitioner

Vs.

1.D. Arunraj

2.The United India Insurance Co. Ltd.,
Motor Third Party Hub,
Silingi Building, 4th Floor,
No. 134, Greams Road,
Chennai 600 006.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment dated 16.08.2019, made in M.C.O.P. No. 6550 of 2015, on the file of the II Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. R. Nalliyappan

For Respondents: Mr. C. Paranthaman (for R2)

J U D G M E N T

This appeal has been filed seeking enhancement of the compensation granted by the award dated 16.08.2019, made in M.C.O.P. No. 6550 of 2015, on the file of the II Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-claimant filed M.C.O.P. No. 6550 of 2015, on the file of the II Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained by him in the accident that took place on 09.08.2015.

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 belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.1,00,900/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 16.08.2019, made in M.C.O.P. No. 6550 of 2015, the appellant has come out with the present appeal.

5. Learned counsel appearing for the appellant contended that the appellant was working as Mason and earning a sum of Rs.700/- per day. In the accident, the appellant suffered with right leg both bone fracture and P.W.2-Doctor assessed the percentage of disability as 35%. The Tribunal erroneously reduced the percentage of disability to 15%. The appellant was aged 27 years at the time of accident and due to malunion of both bones of the right leg, he suffered huge pain and the Tribunal ought to have adopted the multiplier method in awarding compensation under the head disability. The amounts awarded by the Tribunal under the heads loss of income, loss of amenities, attendant charges, extra nourishment and future medical expenses are meagre and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal, rightly reduced the percentage of disability assessed by P.W.2 - Doctor from 35% to 15% on the ground that the disability assessed by the Doctor is not for the whole body. The Tribunal, considering the fact that the injuries sustained by the appellant in the accident did not affect his earning capacity, has rightly held that the appellant is not entitled for compensation by applying multiplier method. The amounts awarded under different heads are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7. Heard learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

8. It is the contention of the appellant that in the accident, he suffered with fracture of both bone in right leg. P.W.2 - Doctor assessed 35% disability for the injuries sustained by the appellant and has issued Disability Certificate. To prove the same, the appellant examined P.W.2 - Doctor and marked Ex.P6. The Tribunal, in the absence of any worksheet and guide lines filed to substantiate the assessment of P.W.2-Doctor, held that the disability assessed by the Doctor is not for the whole body and reduced the same to 15% and awarded a sum of Rs.45,000/- towards disability. The reason given by the Tribunal for reducing the percentage of disability is erroneous. Considering the nature of injuries sustained, the appellant is entitled to compensation for 35% disability. Hence, the amount awarded by the Tribunal towards disability is

enhanced to Rs.1,05,000/-, by awarding a sum of Rs.3,000/- per percentage for 35% disability. The appellant has taken treatment as in-patient in Government Royapettah Hospital, Chennai. The Tribunal has awarded only a sum of Rs.400/- towards attendant charges. Considering the nature of injuries and the treatment taken by the appellant, the same is enhanced to Rs.2,000/- towards attendant charges. The appellant has not produced any material evidence to prove his avocation and that due to the accident, he suffered functional disability and lost his earning power. In view of the same, he is not entitled for compensation by adopting multiplier method. The Tribunal has awarded a meagre sum of Rs.500/- towards loss of clothes. Hence, the same is enhanced to Rs.2,000/-. 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	45,000/-	1,05,000/-	Enhanced
2.	Pain and suffering	10,000/-	10,000/-	Confirmed
3.	Extra nourishment	5,000/-	5,000/-	Confirmed
4.	Attendant charges	400/-	2,000/-	Enhanced
5.	Transport to Hospital	2,500/-	2,500/-	Confirmed
6.	Damages to clothes	500/-	2,000/-	Enhanced
7.	Medical expenses	7,500/-	7,500/-	Confirmed
8.	Future medical expenses	5,000/-	5,000/-	Confirmed
9.	Loss of income	15,000/-	15,000/-	Confirmed
10.	Loss of amenities	10,000/-	10,000/-	Confirmed
	Total	1,00,900/-	1,64,000/-	Enhanced by Rs.63,100/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,00,900/- is enhanced to Rs.1,64,000/- along with interest and costs. The 2nd respondent Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 6550 of 2015. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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

+1 cc to Mr.R.Nalliyappan, advocate, sr.1238

+1 cc to Mr.C.Paranthaman, advocate, sr.1190

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krd 4/1

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