

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 4761 of 2019

K. Subramaniyan

.. Appellant/Petitioner

Vs.

1.G. Janaki

2.The National Insurance Co. Ltd.,
Motor Third Party Claim Office,
No. 751, Anna Salai,
Chennai 600 002. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 08.01.2019, made in M.C.O.P. No. 8535 of 2015, on the file of the V Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. R. Nalliyappan

For Respondents: Mr. D. Bhaskaran (for R2)

:R1 Exparte before the Tribunal

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 08.01.2019, made in M.C.O.P. No. 8535 of 2015, on the file of the V Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-claimant filed M.C.O.P. No. 8535 of 2015, on the file of the V Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.11,00,000/- as compensation for the injuries sustained by him in the accident that took place on 03.11.2015.

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.5,23,350/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 08.01.2019, made in M.C.O.P. No. 8535 of 2015, the appellant has come out with the present appeal.

5. Learned counsel appearing for the appellant contended that in the accident, the appellant suffered fracture of tibial bone on both legs. He took treatment as in-patient for a period of 34 days. P.W.2 - Doctor assessed disability of the appellant as 40% and issued disability certificate which is marked as Ex.P6. Due to malunion of tibial bones, the appellant suffered huge pain and could not walk without the help of walker. The Tribunal, without considering X-ray and medical records produced, reduced the percentage of disability to 30% and awarded meagre amount as compensation towards loss of earnings. The appellant was a House Keeping worker and was earning a sum of Rs.15,000/- per month. The Tribunal without considering the materials on record, has fixed a meagre sum of Rs.7,500/- per month as notional income and awarded meagre amount towards loss of earnings. The amounts awarded by the Tribunal under different heads 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, in the absence of any material evidence to prove the avocation and income of the appellant. The Tribunal fixed a sum of Rs.7,500/- per month as notional income, which is not meagre. Considering the nature of injuries and the treatment taken by him, the Tribunal has granted a sum of Rs.4,38,750/- as compensation towards loss of earnings. The same is not meagre. The Tribunal has granted compensation under different heads, which 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 he suffered type 2 tibial plateau fracture in both legs. P.W.2-Doctor assessed the disability suffered by the appellant as 40%. The Tribunal reduced the percentage of disability assessed by P.W.2 Doctor to 30% on the ground that P.W.2 is a private Doctor and he is not authorized to issue disability certificate. The reason given by the Tribunal for reducing the percentage of disability is just and reasonable. Due to the accident, the appellant has

taken treatment as in-patient in Government Royapettah Hospital, from 03.11.2015 to 07.12.2015, for a period of 35 days and underwent surgery on 18.11.2015. The amount granted by the Tribunal towards attendant charges is meagre. Considering the period of treatment, the appellant is entitled to a sum of Rs.35,000/- towards attendant charges. The appellant was a House Keeping Worker and was earning a sum of Rs.15,000/- per month. In the absence of any material evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.7,500/- as monthly income of the appellant and the same is meagre. The accident is of the year 2014. Hence, a sum of Rs.10,000/- per month is fixed as notional income of the appellant. The appellant was aged 46 years at the time of accident. Applying the multiplier '13' and granting 25% enhancement towards future prospects of the appellant, the amounts awarded by the Tribunal towards loss of earnings is modified to Rs.5,85,000/- {[Rs.10,000/- + Rs.2,500/- (25% of Rs.10,000/-)] x 12 x 13 x 30%}. The amounts awarded by the Tribunal towards pain and suffering, damages to clothes and loss of amenities are meagre. Considering the nature of injuries, the appellant is entitled to a sum of Rs.50,000/- towards pain and suffering, Rs.3,000/- towards damages to clothes and Rs.30,000/- towards loss of amenities. The Tribunal has awarded a lumpsum amount towards transportation and extra nourishment, which is not proper. Hence, a sum of Rs.25,000/- is awarded towards extra nourishment and Rs.10,000/- towards transportation. The amounts awarded by the Tribunal towards medical expenses is just and reasonable and hence, the same is 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.	Pain and sufferings	30,000/-	50,000/-	Enhanced
2.	Transportation and extra nourishment	20,000/-	10,000/- 25,000/-	Enhanced
3.	Loss of earnings	4,38,750/-	5,85,000/-	Enhanced
4.	Attendant charges	13,600/-	35,000/-	Enhanced
5.	Loss of amenities	10,000/-	30,000/-	Enhanced

6.	Medical expenses	10,000/-	10,000/-	Confirmed
7.	Damages to clothes	1,000/-	3,000/-	Enhanced
	Total	5,23,350/-	7,48,000/-	Enhanced by Rs.2,24,650/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.5,23,350/- is enhanced to Rs.7,48,000/- along with interest and costs. The 2nd respondent 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. 8535 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. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.2,24,650/-. No costs.

Sd/-

Assistant Registrar (CS-III-MDU)

//True copy//

Sub Assistant Registrar

gsa

To

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

Copy T1 : The V Small Causes Judge,
(Motor Accident Claims Tribunal),
Chennai.

+1cc to Mr.R. Nalliyappan, Advocate SR.No.2522

+1cc to Mr.D. Bhaskaran, Advocate SR.No.2556

C.M.A. No. 4761 of 2019

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