



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1100 of 2020

N.Suresh Kumar @ David

...Appellant / Petitioner

Vs.

1.Dharmalingam

(R1 remained exparte before the Tribunal)

2.United India Insurance Co. Ltd.,

Third Party Hub,

Silingi Building, No.134, Greams Road,

Murugesanaicker Street,

Chennai 600 006.

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.09.2018, made in M.C.O.P. No.3602 of 2012, on the file of the VI Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr.K.V.Muthu Visakan

For Respondents : M/s. S. Arunkumar (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of compensation granted by the award dated 20.09.2018, made in M.C.O.P. No.3602 of 2012, on the file of the VI Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

2.The appellant-claimant filed M.C.O.P. No.3602 of 2012, on the file of the VI Small Causes Court, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.05.2012.

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



rash and negligent driving by the driver of the Auto belonging to the 1st respondent and directed the 2nd respondent, as insurer of the offending vehicle, to pay a sum of Rs.81,000/- as compensation to the appellant.

WEB COPY

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 20.09.2018, made in M.C.O.P. No.3602 of 2012, the appellant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that in the accident, the appellant sustained grievous injuries and has taken treatment as out-patient at Kilpauk Medical College Hospital. P.W.2 Doctor examined the appellant and certified that the appellant suffered 30% disability. The Tribunal without assigning any reasons, erroneously reduced the percentage of disability suffered by the appellant to 15% and granted meagre amount as compensation. The learned counsel appearing for the appellant further contended that at the time of accident, the appellant was working as a Salesman and was earning a sum of Rs.10,000/- per month. Due to the injuries sustained, the appellant could not do the work as he was doing earlier and lost his earning power. The Tribunal failed to award compensation by adopting multiplier method. The Tribunal has fixed only a sum of Rs.8,000/- per month as notional income and awarded compensation towards loss of income only for one month. The Tribunal failed to award any amount towards medical expenses and attendant charges. The amounts awarded by the Tribunal towards loss of income, pain and suffering, extra nourishment, loss of amenities, damage to clothes and transportation to the Hospital 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 considering the nature of injuries suffered by the appellant and the disability certificate issued by P.W.2 Doctor, which was not supported by any worksheet, rightly reduced the percentage of disability to 15% and granted compensation. The appellant has not proved that he suffered functional disability and lost his entire earning capacity. Hence, he is not entitled to compensation by adopting multiplier method. Considering the nature of injuries suffered by the appellant, the Tribunal awarded 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-Insurance Company and perused the materials available on record.



8. From the materials on record, it is seen that it is the case of the appellant that in the accident, he suffered grievous injuries and has taken treatment at Kilpauk Medical College Hospital as out-patient. P.W.2 Doctor examined the appellant and certified that the appellant suffered 30% disability. The Tribunal reduced the percentage of disability to 15% on the ground that Ex.P5 - disability certificate cannot be considered as a conclusive proof. The said reasoning of the Tribunal is erroneous. The 2nd respondent has not let in any contra evidence to the evidence of P.W.2 Doctor or Ex.P5 ? disability certificate. Considering the evidence of P.W.2 Doctor and the nature of injuries sustained by the appellant, the disability suffered by the appellant is fixed as 30%. The appellant failed to prove that he suffered functional disability. Hence, he is not entitled to compensation by adopting multiplier method and the percentage method adopted by the Tribunal is in order. Thus, the amount awarded by the Tribunal towards disability is enhanced to Rs.90,000/- [Rs.3,000/- x 30%], at the rate of Rs.3,000/- per percentage for 30% disability. 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
1.	Disability	45,000/-	90,000/-	Enhanced
2.	Pain and suffering	10,000/-	10,000/-	Confirmed
3.	Extra nourishment	5,000/-	5,000/-	Confirmed
4.	Transportation	2,000/-	2,000/-	Confirmed
5.	Damage to clothes	1,000/-	1,000/-	Confirmed
6.	Loss of income	8,000/-	8,000/-	Confirmed
7.	Loss of amenities	10,000/-	10,000/-	Confirmed
	Total	81,000/-	1,26,000/-	Enhanced by Rs.45,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.81,000/- is enhanced to Rs.1,26,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the 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.3602 of 2012. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with



interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal.
No costs.

WEB COPY

Sd/-
Assistant Registrar (CCC)

// True Copy //

Sub Assistant Registrar

gsa

To

1.The VI Small Causes Judge,
(Motor Accident Claims Tribunal),
Chennai.

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

+1cc to Mr.S.Arunkumar, Advocate SR.No.5423

+1cc to Mr.K.V.Muthuvisakan, Advocate SR.No.5236

C.M.A.No.1100 of 2020

VG-II(CO)
RVM(22/09/2021)