



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.1229 of 2020

T.Sureshkmar

..Appellant/Petitioner

..Vs..

1.David Premanand

2. Reliance General Insurance Company Ltd.,
Rai's Tower, No.2054, 2nd Avenue, 2nd Floor,
Annanagar, Chennai-40.

(Now operating from

No.6, Reliance House, 6th Floor, Haddows Road,
Nungambakkam, Chennai-6)

..Respondents/Respondents

(R1 Exparte in Lower Court)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.12.2019 made in M.C.O.P.No.427 of 2014 on the file of the Motor Accident Claims Tribunal, Special Court, II Judge, Court of Small Causes, Chennai.

For Appellant : Mr.G.Balaji Prasad

For Respondent : Mr.S.Arunkumar (R2)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 03.12.2019 made in M.C.O.P.No.427 of 2014 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.427 of 2014 on the file of the Motor Accident Claims Tribunal, Special Court-II Judge, Court of Small Causes, Chennai. He filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation on account of the injuries sustained by him in an accident that took place on 22.12.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the rider of the motorcycle belonging to the first respondent and directed the 2nd



respondent-Insurance Company to pay a sum of Rs.1,00,000/- as compensation to the appellant.

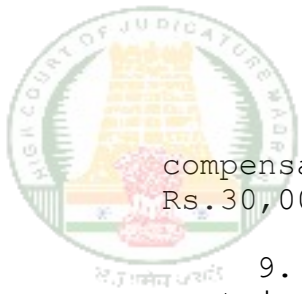
4. Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the Claims Tribunal has not taken into account the gravity of injury and the consequent disability suffered by the injured Appellant and not awarded any compensation towards Loss of Earning Power. He further submitted that the Claims Tribunal has fixed the disability of the injured @ 10% instead of 40% as assessed by P.W.2-Doctor and awarded compensation at Rs.30,000/- at the rate of Rs.3,000/- percentage, without considering the Disability certificate. He further submitted that the Tribunal ought to have awarded the compensation towards loss of earning during treatment period for three months instead of two months taking into consideration of the fact that the appellant was admitted as inpatient for two weeks and thereafter after discharge took treatment as out patient for considerable period. He further submitted that the injured Appellant had undergone a surgery in the right forearm (Open reduction internal fixation) and in future has to undergo another surgery for removal of implants and the Claims Tribunal ought to have taken note of the said fact and should have awarded the compensation towards Future Medical expenses. He further submitted that compensation awarded towards Transport to Hospital, Extra Nourishment, Loss of Amenities, Loss of Expectation of life, Attendar charges and Pain & Suffering are also very low and hence prays for enhancement of compensation.

6. The learned counsel appearing for the 2nd respondent-Insurance Company submitted that the Claims Tribunal on considering both oral and documentary evidence has rightly awarded the compensation under various heads which cannot be said to be very low and therefore the same need not be interfered with.

7. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

8. It is the case of the appellant that Claims Tribunal has fixed the disability of the injured @ 10% instead of 40% as assessed by P.W.2-Doctor and awarded compensation at Rs.30,000/- at the rate of Rs.3,000/- percentage, without considering the Disability certificate. This court taking note of nature of injuries sustained and disability assessed by the Doctor, fixed the percentage of disability at 20% and therefore the



compensation towards permanent disability is enhanced from Rs.30,000/- to Rs.60,000/- (20x3000).

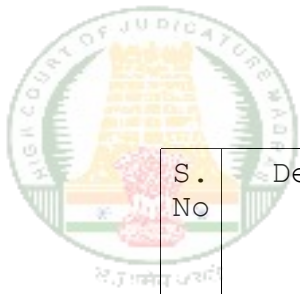
9. This Court taking note of the nature of injuries sustained and period of treatment undergone is inclined to enhance the compensation towards Loss of Amenities. Accordingly Loss of amenities is stands enhanced from Rs.5,000/- to Rs.15,000/-.

10. Considering the submission of the learned counsel for the appellant and on perusing the materials available on record, since the appellant has to undergo another surgery for removal of implants, this Court is inclined to award compensation towards future medical expenses. Accordingly, a sum of Rs.15,000/- is awarded towards Medical expenses.

11. Taking note of the nature of injuries sustained by the appellant and sufferings undergone by him, this Court feels that the compensation towards pain and sufferings may be enhanced. Accordingly, the compensation towards Pain and Suffering is enhanced from Rs.10,000/- to Rs.25,000/-.

12. 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.	Loss of Earning from for two months	22,000/-	22,000/-	Confirmed
2.	Transport to Hospital	7,000/-	7,000/-	Confirmed
3.	Extra nourishment	10,000/-	10,000/-	Confirmed
4.	Damage to clothes and articles	1,000/-	1,000/-	Confirmed
5.	Medical Expenses	Nil-	Nil/-	Confirmed
6.	Loss of amenities of life	10,000/-	10,000/-	Confirmed



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
7.	Loss of expectation of life	5,000/-	5,000/-	Confirmed
8.	Attender charges	5,000/-	15,000/-	Enhanced
9.	Pain and suffering	10,000/-	25,000/-	Enhanced
10	Permanent disability	30,000/-	60,000/-	Enhanced
11	Loss of Earning Power	Nil	Nil	Confirmed
12	Future Medical expenses	Nil	15,000/-	Granted
	Total	Rs.1,00,000/-	Rs.1,70,000/-	Enhanced by Rs.70,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,00,000/- is hereby enhanced to Rs.1,70,000/- 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, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.427 of 2014 on the file of the Motor Accident Claims Tribunal, Special Court, II Judge, Court of Small Causes, Chennai. On such deposit being made, the Tribunal is directed to transfer the Award amount directly to the Bank account of the Appellant/Claimant through RTGS, within a period of two weeks. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar



To

WEB COPY

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

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

+1 CC to Mr.G.Balaji, Advocate sr 38679.

C.M.A.No.1229 of 2020

KV(CO)
SP(18/11/2021)