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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1878 of 2014

R.Anandan

...Appellant/Petitioner

Vs

1.R.Mohana Sundaram

2.IFFCO Tokio General Insurance Company Ltd.,
No.28/195, First & Second floor,
North Usman Road,
T.Nagar, Chennai 600 017.

3.Saravanan

...Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.11.2013 made in M.C.O.P.No.3855 of 2008 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

For Appellant : Mrs.K.Vasanthala Mala

For Respondents : Mr.K.M.Ramesh for R1
No appearance for RR2 & 3

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 05.11.2013 made in M.C.O.P.No.3855 of 2008 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

2.The appellant is the claimant in M.C.O.P.No.3855 of 2008 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai. He filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.08.2008.



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 respondents 1 & 3 and directed the 2nd respondent/Insurance Company, being insurer of the said auto to pay a sum of Rs.1,56,900/- as compensation to the appellant at the first instance and recover the same from the respondents 1 and 3 as owners of the auto.

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 in the accident, the appellant suffered fracture of distal 3rd fibula left, swelling of left ankle, deep cut injury on the lower and upper lip and left leg movement was restricted. P.W.2/Doctor examined the appellant and certified that the appellant suffered 50% disability and issued Ex.P14/disability certificate to that effect. The Tribunal without giving any valid reason, reduced the percentage of disability to 35% and awarded compensation only for 35% disability. The Tribunal ought to have awarded compensation for 50% disability. The appellant was working as a Graphic Designer in Rage Communication Private Limited and was earning a sum of Rs.22,000/- per month at the time of accident. The amount of Rs.10,000/- awarded by the Tribunal towards loss of income is meagre. The Tribunal ought to have awarded compensation towards loss of expectation of life, mental agony to the appellant and his family members, loss of security in life and loss of amenities. The amounts awarded by the Tribunal under other heads are also meagre and prayed for enhancement of compensation.

6.The learned counsel appearing for the 1st respondent/owner of the auto submitted that the total compensation awarded by the Tribunal is not meagre. The appellant has not proved his avocation and income. In the absence of any material evidence, the amount awarded by the Tribunal towards loss of income is not meagre. The disability assessed by P.W.2/Doctor is on the higher side. Hence, the Tribunal rightly reduced the disability to 35% and awarded just compensation. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.



7. Though notice has been served on the respondents 2 & 3 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

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8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and perused the entire materials available on record.

9. From the materials available on record, it is seen that it is case of the appellant that in the accident he sustained fracture of distal 3rd fibula left, swelling of left ankle, deep cut injury on the lower and upper lip and left leg movement has restricted. To prove the same, the appellant examined himself as P.W.1 and P.W.2/Doctor. P.W.2/Doctor examined the appellant and certified that appellant suffered 50% disability and issued Ex.P14/disability certificate to that effect. The Tribunal reduced the percentage of disability from 50% to 35% on the ground that P.W.2/Doctor is not the doctor who treated the appellant and he assessed the disability after the lapse of 5 years. The reason given by the Tribunal is not correct. The respondents have not let in any contra evidence to disprove the evidence of P.W.2/Doctor and Ex.P14/disability certificate. Hence, the appellant is entitled to compensation for 50% disability. The Tribunal has awarded a sum of Rs.2,000/- per percentage of disability and the same is proper. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,00,000/- (Rs.2,000/- X 50% of disability).

10. It is the contention of the appellant that at the time of accident, he was aged 37 years, working as a Graphic Designer and was earning a sum of Rs.22,000/- per month. To prove the same, the appellant has produced Exs.P10 and P11 - Appointment letter & Pay slip respectively. However, the appellant has not examined the Author of the said documents to prove the same. Hence, the Tribunal awarded a sum of Rs.10,000/- towards loss of earning. The accident occurred in the year 2008 and the amount awarded by the Tribunal towards loss of income is meagre. Considering the nature of work and date of accident, a sum of Rs.7,500/- per month is fixed as notional income of the appellant. Due to the injuries and disability suffered, the appellant would not have attended his work atleast for a period of three months. Thus, the compensation awarded by the Tribunal towards loss of earning is enhanced to Rs.22,500/- (Rs.7,500/- X 3 months). The appellant has taken treatment in Parvathy Hospital as inpatient on 27.08.2008 & 29.08.2008 and again from 04.09.2008 to 05.09.2008. It is the case of the appellant that



he has taken continuous treatment as outpatient and to prove the same he has marked Exs.P4 to P7, Discharge summaries, Prescriptions and OP treatment record. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards extra nourishment and transportation are enhanced to Rs.5,000/- each as amounts granted by the Tribunal is meagre. The Tribunal has not awarded any amount towards attendant charges, loss of amenities and damage to clothes. Therefore, a sum of Rs.7,500/-, Rs.10,000/- and Rs.1,000/- are awarded towards attendant charges, loss of amenities and damage to clothes. The amounts awarded by the Tribunal towards medical expenses and pain & sufferings 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	10,000/-	22,500/-	Enhanced
2.	Transportation	4,000/-	5,000/-	Enhanced
3.	Extra nourishment	4,000/-	5,000/-	Enhanced
4.	Medical expenses	48,870/-	48,870/-	Confirmed
5.	Pain and sufferings	20,000/-	20,000/-	Confirmed
6.	Disability	70,000/-	1,00,000/-	Enhanced
7.	Attendant charges	-	7,500/-	Granted
8.	Loss of amenities	-	10,000/-	Granted
9.	Damage to clothes	-	1,000/-	Granted
	Total	Rs.1,56,870/-	Rs.2,19,870/-	Enhanced by Rs.63,000/-
	Rounded off to	Rs.1,56,900/-	Rs.2,19,900/-	Enhanced by Rs.63,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,56,900/- is hereby enhanced to Rs.2,19,900/- 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.3855 of 2008 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.IV, Chennai, at the first instance and recover the same from the respondents 1 and 3 as owners of the auto. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, by filing necessary petitions before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vkr
To

1.The IV Judge
Court of Small Causes
Motor Accident Claims Tribunal
Chennai.

Copy to
The Section Officer
V.R.Section
High Court, Chennai.

+1 CC to Mr.K.M.Ramesh, Advocate sr 67432
+2 Ccs to Mr.U.M. Ravichandran, Advocate sr 67591.

C.M.A.No.1878 of 2014

SVI (CO)
SP(07/01/2022)