



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1994 of 2014

Vijay Sankar

.. Appellant/Petitioner

Vs.

1.T.N.Srinivasan

2.ICICI Lombard General Insurance Company Limited,

1st Floor, Arihant Plaza,

No.84/85, Waltax Road,

Chennai - 600 003.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.12.2013 made in M.C.O.P.No.5097 of 2010 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R1 : No appearance Exparte

For R2 : Ms.R.Sreevidhya

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode".)

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 06.12.2013 made in M.C.O.P.No.5097 of 2010 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.5097 of 2010 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.1,50,000/- as compensation for the injuries sustained by him in the accident that took place on 05.12.2010.

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 Tata Ace van belonging to 1st respondent and directed the 2nd respondent to pay a sum of Rs.40,000/- 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 appellant sustained grievous injuries and disability in the accident. He has taken outpatient treatment at Vee Care Hospital on 05.12.2010. P.W.4/Doctor examined the appellant and certified that the appellant suffered 45% disability. The appellant filed and marked documents and examined P.W.4/Doctor and proved the injuries and disability suffered by him. The respondents have not let in any contra evidence to disprove the case of the appellant. In the absence of any contra evidence, the Tribunal erroneously reduced the percentage of disability from 45% to 15% and granted compensation only for 15% disability. The Tribunal ought to have fixed the disability of the appellant at 45% as assessed by P.W.4/Doctor and granted compensation for 45% disability. The Tribunal has awarded a meagre sum of Rs.30,000/- towards disability. The Tribunal ought to have awarded a sum of Rs.50,000/- towards disability as claimed by the appellant. The Tribunal has not awarded any amounts towards loss of income, loss of earning power and future medical expenses. The amounts awarded by the Tribunal towards pain and sufferings, extra nourishment and transportation are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal reduced the percentage of disability assessed by P.W.4/Doctor from 45% to 15% on the ground that assessment of disability by P.W.4/Doctor appears to be on the higher side. Hence, the appellant is not entitled to compensation for 45% disability. The appellant has not proved that he lost his income during treatment period. Hence, he is not entitled to any compensation towards loss of



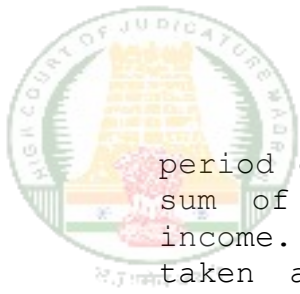
income. Further, the appellant has not proved that he suffered functional disability and he has taken treatment only as out patient. Therefore, the appellant is not entitled to any amount towards loss of earning capacity. The Tribunal considering the entire materials on record, has awarded a sum of Rs.40,000/- as compensation, which is not meagre. 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 1st respondent and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

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

9. From the materials available on record, it is seen that it is the case of the appellant that in the accident he sustained grievous injuries all over the body. P.W.4/Doctor examined the appellant and certified that appellant suffered 45% disability and issued Ex.P11/disability certificate to that effect. The Tribunal reduced the percentage of disability from 45% to 15% on the ground that assessment of disability by P.W.4/Doctor appears to be on the higher side. The Tribunal has given proper reason for reducing the percentage of disability from 45% to 15%. Hence, the appellant is entitled to compensation only for 15% disability. The accident is of the year 2010 and a sum of Rs.2,000/- per percentage of disability awarded by the Tribunal is meagre. Considering the year of accident, the appellant is entitled to a sum of Rs.3,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.45,000/- (Rs.3,000/- X 15% of disability). The appellant has not proved that he suffered functional disability and lost his earning capacity. Hence, he is not entitled to any compensation towards loss of earning capacity by adopting multiplier method.

10. It is the contention of the appellant that at the time of accident, he was aged 24 years, working as Team Leader in Vodafone, Chennai and was earning a sum of Rs.25,000/- per month. The appellant has not produced any documentary evidence to prove his avocation and income. The accident occurred in the year 2010. Considering the year of accident, age and nature of work done by the appellant, a sum of Rs.8,000/- per month is fixed as notional income of the appellant. Due to the injuries sustained by him in the accident, he would not have attended his work atleast for a



period of two months. Therefore, the appellant is entitled to a sum of Rs.16,000/- (Rs.8,000/- X 2 months) towards loss of income. Considering the nature of injuries, period of treatment taken and disability suffered by the appellant, the amounts awarded by the Tribunal towards pain and sufferings, extra nourishment and transportation are enhanced to Rs.10,000/-, Rs.5,000/- and Rs.5,000/- respectively as amounts awarded by the Tribunal are meagre. Considering the nature of injuries and disability suffered by the appellant, he is entitled to a sum of Rs.10,000/- towards loss of amenities. 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	30,000/-	45,000/-	Enhanced
2.	Pain and sufferings	5,000/-	10,000/-	Enhanced
3.	Medical expenses	3,000/-	3,000/-	Confirmed
4.	Transportation	1,000/-	5,000/-	Enhanced
5.	Extra nourishment	1,000/-	5,000/-	Enhanced
6.	Loss of Income	-	16,000/-	Granted
7.	Loss of amenities	-	10,000/-	Granted
	Total	Rs.40,000/-	Rs.94,000/-	Enhanced by Rs.54,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.40,000/- is hereby enhanced to Rs.94,000/- 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 six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.5097 of 2010 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. 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 making necessary applications before the Tribunal. No costs.

Sd/-

WEB COPY

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

krk

To

1.The learned II Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

Copy to:The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mrs.R.Sreevidhya, Advocate SR.No.68376
+1cc to Mr.K.Varadhakamaraj, Advocate SR.No.68167

C.M.A.No.1994 of 2014

CA(CO)
CB(17/02/2022)