



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2021

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.510 OF 2014

Govindan

...Appellant / Claimant

Vs.

1.R.Seethalakshimi

(R1 remained exparte before Tribunal)

2.New India Insurance Company Limited,

Third Party Cell,

Regional Office,

No.45, Moore Street,

Parrys,

Chennai - 600 001.

...Respondents / Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.10.2012 made in M.C.O.P.No.2299 of 2011 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.F.Terry Chella Raja
for Ms.M.Malar

For R1 : Exparte

For R2 : Mr.G.Udhayasankar

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 10.10.2012 made in M.C.O.P.No.2299 of 2011 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.2299 of 2011 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.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.05.2011.

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 Maruthi Omni Car belonging to 1st 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 in the accident, the appellant sustained abrasion in fore head, swelling in the brain and multiple grievous injuries all over the body. P.W.3/Doctor, who examined the appellant deposed that the appellant is having head ache, giddiness, shivering in the left hand and leg, loss of memory, he is not able to lift weight at head and certified that the appellant has suffered 30% disability. But, the Tribunal has awarded only a meagre sum of Rs.60,000/- towards disability. The Tribunal ought to have fixed the loss of earning capacity of the appellant at 100% and awarded compensation. At the time of accident, the appellant was aged 49 years, doing Centering work and was earning a sum of Rs.10,000/- per month. The Tribunal fixed a meagre sum of Rs.4,500/- per month as notional income of the appellant and awarded compensation towards loss of income only for three months. The amounts awarded by the Tribunal towards extra nourishment, pain and sufferings and damages to clothes are meagre. The Tribunal has not awarded any amounts towards attendant charges, future medical expenses and loss of amenities and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that P.W.3/Doctor is not the Doctor who treated the appellant and hence, the percentage of disability assessed by him at 30% is not correct. The Tribunal has awarded a sum of Rs.60,000/- for 30% disability at the rate of Rs.2,000/- per percentage of disability and the same is excessive. The appellant has not proved his avocation and income. In the absence of any document with regard to avocation and income, a sum of Rs.4,500/- per month fixed by the Tribunal as notional income of the appellant is excessive. The Tribunal considering the entire materials on record, has awarded a sum of Rs.1,00,000/- as compensation to the appellant for the simple injuries sustained by him in the accident and the same is excessive. The appellant has not made out any case for



enhancement of compensation and prayed for dismissal of the appeal.

7. 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.

8. From the materials on record, it is seen that in the accident, the appellant sustained abrasion in fore head, swelling in the brain and multiple grievous injuries all over the body. To prove the same, the appellant examined himself as P.W.1 and examined Dr. J. R. R. Thiagarajan as P.W.3. P.W.3/Doctor examined the appellant and certified that the appellant has suffered 30% disability. P.W.3/Doctor is not the Doctor who treated the appellant. The Tribunal considering the nature of injuries sustained by the appellant, held that the assessment of disability by P.W.3/Doctor appears to be reasonable and awarded a sum of Rs.60,000/- for disability at the rate of Rs.2,000/- per percentage of disability. The accident is of the year 2011 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 modified to Rs.90,000/- (Rs.3,000/- X 30% disability).

9. It is the contention of the appellant that at the time of accident, he was aged 49 years, doing Centering work and was earning a sum of Rs.10,000/- per month. The appellant has not produced any material evidence to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed the notional income of the appellant at Rs.4,500/- per month and awarded a sum of Rs.13,500/- as compensation towards loss of income for three months. The accident occurred in the year 2011. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Hence, a sum of Rs.8,000/- per month is fixed as notional income of the appellant. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.24,000/- (Rs.8,000/- X 3 months). The appellant has taken first aid treatment in the Chrompet Government Hospital and thereafter, has taken treatment as inpatient for two days on 27.05.2011 and 28.05.2011 at Chennai General Hospital. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the period of treatment taken by the appellant, a sum of Rs.5,000/- is awarded towards attendant charges. Considering the nature of injuries and disability suffered by the appellant, this Court is of the view that he would have suffered inconvenience and would be facing discomfort in his life. Therefore, the appellant is entitled to a sum of



Rs.10,000/- towards loss of amenities. The appellant has not produced any medical records to show that he requires further medical treatment. Hence, he is not entitled to any amount towards future medical expenses. Considering the nature of injuries and period of treatment taken by the appellant, this Court is of the view that 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	60,000/-	90,000/-	Enhanced
2.	Pain and sufferings	10,000/-	10,000/-	Confirmed
3.	Extra nourishment	5,000/-	5,000/-	Confirmed
4.	Medical expenses	5,000/-	5,000/-	Confirmed
5.	Loss of Income	13,500/-	24,000/-	Enhanced
6.	Transportation	5,000/-	5,000/-	Confirmed
7.	Damages to clothes	1,500/-	1,500/-	Confirmed
8.	Attendant charges	-	5,000/-	Granted
9.	Loss of Amenities	-	10,000/-	Granted
	Total	Rs.1,00,000/-	Rs.1,55,500/-	Enhanced by Rs.55,500/-

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.1,55,500/- 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.2299 of 2011 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.

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Sd/-
Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

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To

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

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

+1cc to M/s.M.Malar, Advocate, Sr.No.59907

+1cc to Mr.G.Udaya Sankar, Advocate, Sr.No.59678

C.M.A.No.510 of 2014

JPL(CO)
RVM(06/04/2022)