



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3252 of 2014

D.Subramani

.. Appellant/Petitioner

Vs.

1.Raji

(R1 remained exparte before Tribunal)

2.Sri Ram General Insurance Company Limited,

City Centre Complex, 2nd floor,

No.66, Thirumalai Pillai Road,

T.Nagar,

Chennai - 600 017.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.02.2013 made in M.C.O.P.No.5637 of 2011 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mrs.A.Subadra
for Ms.M.Malar

For R2 : No appearance

J U D G M E N T

(The matter is heard through "Video Conferencing".)

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 15.02.2013 made in M.C.O.P.No.5637 of 2011 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.5637 of 2011 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 24.11.2011.



3.The Tribunal considering the pleadings, oral and documentary evidence, fixed 80% negligence on the part of the driver of the auto belonging to 1st respondent, 20% negligence on the part of the appellant, awarded a sum of Rs.1,28,299/- as compensation to the appellant and directed the 2nd respondent-Insurance Company to pay a sum of Rs.1,02,700/- being 80% of the award amount 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 head injury, left temporal bone fracture, right temporo parietal acute SAH, fracture of left temporal bone, bleeding in ear, savoir head injuries, laceration and multiple grievous injuries in the accident. He has taken treatment at Sooriya Hospital, Saligramam, Chennai as inpatient for five days from 24.11.2011 to 28.11.2011. P.W.2/Doctor examined the appellant and certified that the appellant suffered 50% disability and deposed that due to head injury, the appellant is experiencing headache, giddiness, shivering of limbs, loss of memory and bleed from left ear and issued Ex.P9/disability certificate to that effect. The Tribunal erroneously reduced the percentage of disability from 50% to 30% and granted compensation only for 30% disability. The Tribunal ought to have fixed the disability of the appellant at 50% as assessed by P.W.2/Doctor and granted compensation for 50% disability. Due to the injuries sustained by the appellant in the accident, he could not do any work as he was doing earlier and hence, the Tribunal ought to have adopted multiplier method and awarded compensation for 100% loss of earning capacity. The appellant was aged 46 years, working as Setting Carpenter at A.V.M.Studio, Chennai and was earning a sum of Rs.8,000/- per month and the compensation awarded by the Tribunal towards loss of income during treatment period is meagre. The Tribunal has not awarded any amounts towards attendant charges, future medical expenses and loss of amenities. The amounts awarded by the Tribunal towards pain and sufferings, extra nourishment and damages to clothes are meagre and prayed for enhancement of compensation.

6.The 1st respondent remained exparte before the Tribunal and hence, notice to 1st respondent has been dispensed with.

7.Though the 2nd respondent-Insurance Company entered appearance through counsel, today when the matter is taken up for



hearing, there is no representation for them.

8. Heard the learned counsel appearing for the appellant and perused the entire materials on record.

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9. From the materials available on record, it is seen that it is the case of the appellant that in the accident he sustained head injury, left temporal bone fracture, right temporo parietal acute SAH, fracture of left temporal bone, bleeding in ear, savoir head injuries, laceration and multiple grievous injuries in the accident. To prove the nature of injuries and disability suffered by him, the appellant examined himself as P.W.1 and examined Dr.J.R.R.Thiagarajan as P.W.2. P.W.2/Doctor examined the appellant and certified that appellant suffered 50% disability and deposed that due to head injury, the appellant is experiencing headache, giddiness, shivering of limbs, loss of memory for which he assessed 30% disability and assessed 20% disability for bleeding from left ear, totalling 50% disability. The Tribunal reduced the percentage of disability from 50% to 30% on the ground that disability assessed by P.W.2/Doctor is based on the contentions of appellant only. The reason given by the Tribunal for fixing the percentage of disability of the appellant at 30% is proper and valid. 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 enhanced to Rs.90,000/- (Rs.3,000/- X 30% 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 46 years, working as Setting Carpenter at A.V.M.Studio, Chennai and was earning a sum of Rs.8,000/- per month. The appellant has not produced any documentary evidence to prove his avocation and income. In the absence of any evidence with regard to avocation and income, the Tribunal considering the year of accident, age and nature of work done by the appellant awarded a sum of Rs.15,000/- as compensation towards loss of income. The accident occurred in the year 2011. 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 the appellant in the accident, he would not have attended his work at least for a period of five months. Thus, the compensation awarded by the



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Tribunal towards loss of income is enhanced to Rs.40,000/- (Rs.8,000/- X 5 months). The appellant has taken treatment at Sooriya Hospital, Saligramam, Chennai as inpatient for five days from 24.11.2011 to 28.11.2011. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the nature of injuries and period of treatment taken by the appellant, he is entitled to a sum of Rs.10,000/- each towards attendant charges and loss of amenities. Considering the nature of injuries, disability and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards damages to clothes and transportation are meagre and hence, the same are hereby enhanced to Rs.1,000/- and Rs.7,500/- respectively. 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. 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	54,000/-	90,000/-	Enhanced
2.	Pain and sufferings	15,000/-	15,000/-	Confirmed
3.	Medical expenses	33,799/-	33,799/-	Confirmed
4.	Transportation	5,000/-	7,500/-	Enhanced
5.	Extra nourishment	5,000/-	5,000/-	Confirmed
6.	Loss of Income	15,000/-	40,000/-	Enhanced
7.	Damages to clothes	500/-	1,000/-	Enhanced
8.	Attendant charges	-	10,000/-	Granted
9.	Loss of amenities	-	10,000/-	Granted
	Total	Rs.1,28,299/-	Rs.2,12,299/-	Enhanced by Rs.84,000/- (Rs.2,12,299/- - Rs.1,28,299/-)
	80% of the award amount	Rs.1,02,639/- rounded off to Rs.1,02,700/-	Rs.1,69,839/- rounded off to Rs.1,69,700/-	



11. In the result, this Civil Miscellaneous Appeal is partly allowed and the total compensation awarded by the Tribunal at Rs.1,28,299/- is hereby enhanced to Rs.2,12,299/- 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 80% of the award amount, (i.e., Rs.1,69,700/-) 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.5637 of 2011 on the file of the Motor Accident Claims Tribunal, V 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/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
The V Judge,
Vth Small Causes Court,
Chennai.

Copy to:

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

+1cc to M/s.M.Malar, Advocate SR.No.3354

C.M.A.No.3252 of 2014

VBM(CO)
CB(01/03/2022)