

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2306 of 2015

M.Anandavel

.. Appellant

Vs.

1. P.Satyamaiah @ Satyanarayana

2. Legal Department,
Sriram General Insurance Company Limited,
No.66, Thirumalaipillai Street,
T.Nagar, Chennai - 17.

... Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 07.12.2013 made in M.C.O.P.No.3969 of 2011 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.N.M.Elumalai

For R1 : No Appearance

For R2 : Mr.S.Dhakshnamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 07.12.2013 made in M.C.O.P.No.3969 of 2011 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

2.The appellant is claimant in M.C.O.P.No.3969 of 2011 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai. He has filed the said claim petition claiming a sum of Rs.40,00,000/- as compensation for the injuries sustained by him in the accident that took place on 14.03.2011.

3.The Tribunal considering the pleadings, oral and

documentary evidence held that both the respondents are responsible for the accident and directed the second respondent, who is insurer of the first respondent, to pay compensation to the appellant and awarded a sum of Rs.15,17,430/- as compensation to the appellant.

4. Not being satisfied with the amount 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 PW2/Doctor after examining the appellant, has certified the disability of the appellant at 70% and the Tribunal erroneously reduced the same to 50%. The appellant was working in Pride hotel, Kilpauk, Chennai, as Cashier and was earning a sum of Rs.6,520/-. The appellant was also working as Computer instructor in Om Sakthi Tuition Centre and was earning a sum of Rs.6,000/- per month. The appellant produced documents to show that he was working in both and was earning a sum of Rs.12,520/- per month. The Tribunal erroneously rejected the certificate produced by the appellant and fixed only a sum of Rs.6,520/- per month as his income. The appellant has spent a sum of Rs.1,35,700/- for the purchase of artificial leg. The Tribunal did not grant the said amount on the ground that the appellant has already purchased artificial leg. The amounts awarded by the Tribunal under the heads of extra nourishment, pain and suffering are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the left leg of the appellant below the knee was amputated and as per the provisions of Workmen Compensation Act, the disability of the appellant is only 50% and the Tribunal has rightly fixed the disability at 50%. The Tribunal has given valid reason for not granting any amount for the purchase of artificial leg. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

7. Heard the learned counsel for the appellant as well as the second respondent and perused the materials available on record.

8. It is not in dispute that due to the injuries sustained by the appellant in the accident, his left leg below the knee was amputated. PW2/Doctor has certified the disability of the appellant at 70%. The Tribunal applying the provisions of Workmen Compensation Act, reduced the same to 50%. The provisions of the Workmen Compensation Act is not applicable to the claim made under Motor Vehicles Act, which is self-contained code. The percentage of disability as per Workmen Compensation Act cannot be sole criteria for fixing percentage

of disability. The respondents have not examined any witness to disprove the disability certificate produced by the appellant and evidence of PW2/Doctor. In view of the above facts, the appellant is entitled to loss of earning capacity at 70% as certified by PW2/Doctor. The amount awarded by the Tribunal under the head of loss of earning capacity is modified as follows:

$$\text{Rs.6,520/-} \times 12 \times 17 \times 70/100 = \text{Rs.9,31,056/-}$$

9. The appellant was aged 27 years at the time of accident and underwent treatment. His left leg below the knee was amputated and he would have suffered a lot of pain and suffering due to the injuries sustained by him in the accident. In view of the same, the amounts awarded by the Tribunal towards pain and suffering and extra nourishment are hereby enhanced from Rs.75,000/- to Rs.1,00,000/- and from Rs.20,000/- to Rs.30,000/- respectively. The Tribunal has reduced a sum of Rs.1,35,700/-, which sum appellant spent for purchase of artificial leg from the amount claimed for future medical expenses. The Tribunal erred in reducing the same on the ground that the appellant has already purchased artificial leg. Once the claim of the appellant that he purchased artificial leg is not disputed, the appellant is entitled to claim the said amount from the second respondent. The appellant is granted a sum of Rs.1,35,700/- for purchase of artificial leg. The amounts awarded by the Tribunal under all the other heads are just and proper and 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.	Transportation	22,000	22,000	confirmed
2.	Extra nourishment	20,000	30,000	enhanced
3.	Medical expenses	2,41,190	2,41,190	confirmed
4.	Future Medical expenses and purchase of artificial leg	1,74,200 + 1,35,700	3,09,900	enhanced

5.	Attendant charges	20,000	20,000	confirmed
6.	Loss of marriage prospects	1,00,000	1,00,000	confirmed
7.	Loss of amenities, happiness, mental agony and discomfort	1,00,000	1,00,000	confirmed
8.	Loss of expectation of life	1,00,000	1,00,000	confirmed
9.	Pain and suffering	75,000	1,00,000	enhanced
10.	Loss of earning capacity	6,65,040	9,31,056	enhanced
	Total	15,17,430	19,54,146	Enhanced by Rs.4,36,716/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,17,430/- is hereby enhanced to Rs.19,54,146/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. It is made clear that the appellant/claimant shall not be entitled for any interest for the delay period. The second respondent/Insurance Company is directed to deposit the enhanced award amount with interest now determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount, less the amount if any, already withdrawn. No costs.

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Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
II Court of Small Causes,
Chennai.

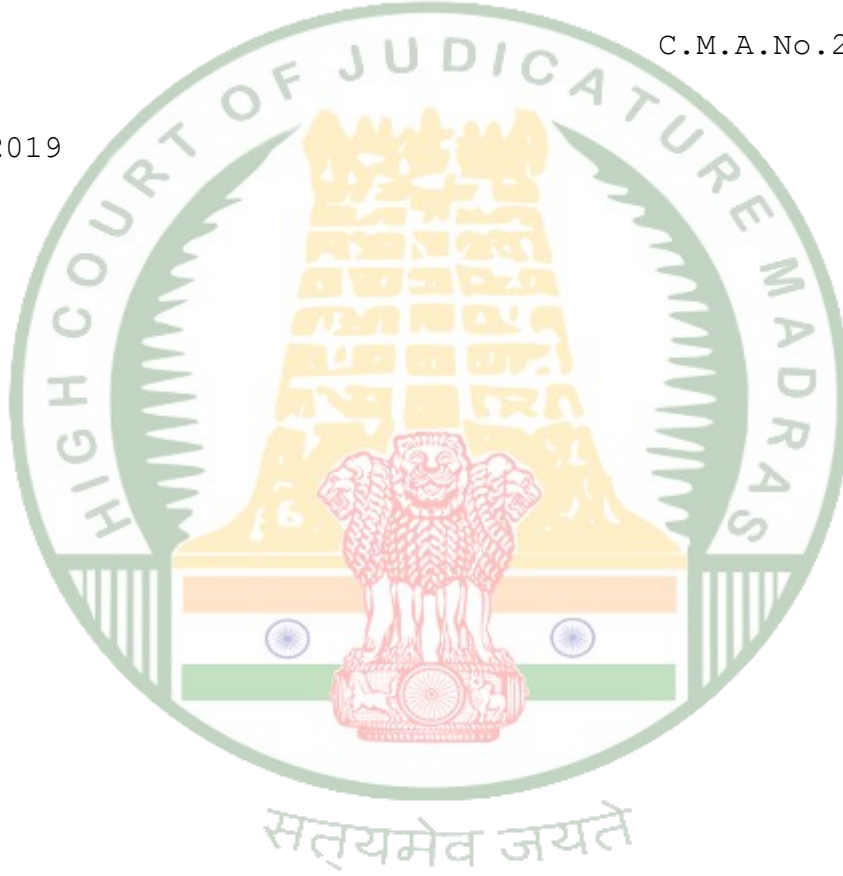
2.The Record Keeper
V.R.Section, High Court,
Madras-104 (2 Copies)

+1cc to Mr.N.M.Elumalai, Advocate, S.R.No.77934

+1cc to Mr.S.Dhakshnamoorthy, Advocate, S.R.No.78540

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