

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.21 of 2016

A.Manikandan

.. Appellant/Petitioner

Vs.

1.A.S.Raju

2.The Branch Manager,

Reliance General Insurance Co. Ltd.,

6th Floor, Nungambakkam,

Chennai 600 006.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 20.08.2015 made in M.C.O.P.No.6745 of 2013, on the file of III Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.T.Meganathan
for Mr.R.Nalliyappan

For R1 : No appearance

For R2 : Mr.S.Arunkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award and decree dated 20.08.2015 made in M.C.O.P.No.6745 of 2013, on the file of III Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

2.The appellant is the claimant in M.C.O.P.No.6745 of 2013, on the file of III Small Causes Court, (Motor Accidents Claims Tribunal), Chennai. He filed the said claim petition, claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained by him in the accident that took place on 21.10.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident took place only due to rash and negligent riding by the rider of Motorcycle belonging to the first respondent and directed the second respondent to pay a sum of Rs.2,75,500/- as compensation to the appellant.

4.Not being satisfied with the compensation awarded by the Tribunal, the appellant has come out with this appeal, seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that P.W.2-Doctor had deposed with regard to the nature of injuries and treatment taken by the appellant. After verifying Ex.P2, Discharge Summary and examining the appellant, P.W.2-Doctor has certified that appellant has suffered 75% disability. The Tribunal erroneously reduced the same to 40% on the ground that P.W.2-Doctor was not the Doctor who treated the appellant. He further contended that the amounts awarded under different heads are meager and hence, prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the second respondent contended that the Tribunal has considered the evidence of P.W.2-Doctor in detail and reduced the percentage of disability by giving proper reason. There is no error in the said finding of the Tribunal reducing the percentage of disability. There is no fracture and the appellant did not undergo any surgery. He was in the hospital only for few days and amounts awarded under different heads are not meager. Hence, the appellants are not entitled for any enhancement of compensation.

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

8.From the materials on record, it is seen that the appellant had examined P.W.2-Doctor, who has certified the disability of the appellant at 75% under different heads. The Doctor has given 30% disability for loss of hearing capacity of the appellant. The Tribunal observed the appellant in Court when he was examined as P.W.1 and found that there is no hearing defect for the appellant. The said disability as certified by the Doctor was not supported by any material. Considering the disability certificate in entirety which relates to different parts, the Tribunal has fixed the disability suffered by the appellant at 40% and has given reason for reducing the same to 40%. There is no error in the said finding warranting

interference by this Court. The Tribunal has granted compensation towards disability at the rate of Rs.2,000/- per percentage of disability. The accident took place on 21.10.2013 and hence, the appellant is entitled to compensation under the head of disability at the rate of Rs.3,000/- per percentage of disability. Hence, the amount awarded towards disability is enhanced to Rs.1,20,000/- [Rs.3,000 x 40% = Rs.1,20,000/-].

9.The amounts awarded under the heads of extra nourishment, attender charges and pain and suffering are meager. Hence, the same are modified as Rs.10,000/-, Rs.10,000/- and Rs.50,000/- respectively. The amounts granted under other heads are reasonable and hence, they are 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.	Attender charges	6,000/-	10,000/-	enhanced
2.	Extra nourishment	7,000/-	10,000/-	enhanced
3.	Pain and suffering	40,000/-	50,000/-	enhanced
4.	Transport to hospital	5,000/-	5,000/-	confirmed
5.	Damage to clothing	500/-	500/-	confirmed
6.	Medical expenses	96,797/-	96,797/-	confirmed
7.	Loss of amenities	15,000/-	15,000/-	confirmed
8.	Future prospects	25,000/-	25,000/-	confirmed
9.	Disability	80,000/-	1,20,000/-	enhanced
	Total	2,75,297/-	3,32,297/-	Enhanced by Rs.57,000/-

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is enhanced to Rs.3,32,297/- with interest and costs. The second respondent-Insurance Company is directed to deposit the enhanced award amount, with interest, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a

copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount, if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

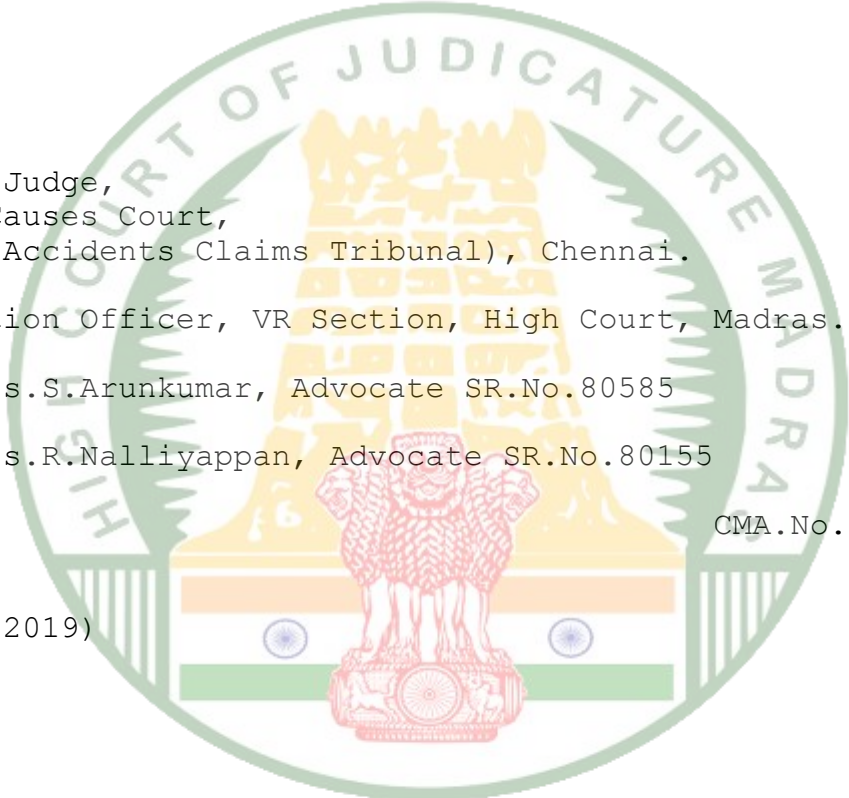
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To

- 1.The III Judge,
Small Causes Court,
(Motor Accidents Claims Tribunal), Chennai.
 - 2.The Section Officer, VR Section, High Court, Madras.
- +1cc to M/s.S.Arunkumar, Advocate SR.No.80585
+1cc to M/s.R.Nalliyappan, Advocate SR.No.80155

CMA.No.21 of 2016

AK(CO)
GMY(10/01/2019)



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