

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 12.03.2018

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THE HON'BLE MR.JUSTICE R.SUBBIAH

and

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

C.M.A.No.2271 of 2016

S.Srinivasan

... Appellant/Petitioner

Vs.

1.Uma Vijayakumar

2.HDFC General Insurance Co. ltd.,

Rehja Complex,

No.177, Anna Salai,

Chennai-600002.

... Respondents/Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award dated 19.09.2013 in M.A.C.T.O.P.no.3520 of 2007 on the file of the Motor Accident Claims Tribunal (Chief Judge, Small Causes Court), Chennai.

For Appellant

: Mr.Terry Chellaraja for Mr.V.Velu

For Respondents

: Ms.Harini for M/s.M.B.Gopalan (for R2)

R1 - Exparte

* * * * *

JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.,)

Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Chief Judge, Small Causes Court), Chennai, in and by award dated 19.09.2013 in M.A.C.T.O.P.No.3520 of 2007, the claimant/victim has filed the present appeal seeking enhancement of the compensation amount.

2.It is the case of the claimant/victim that on 09.12.2006 at 5.15 pm, while he was travelling along with his friends in a car bearing Reg.No.TN-09-AK-2165 from Chennai to Pondicherry, near Sikkanankuppam Village, Kancheepuram District, the driver of the said car drove the same in a rash and negligent manner and hit against a transport bus, which was coming from opposite

direction. In the said accident, the claimant sustained multiple injuries all over the body. Hence, he made a claim for a sum of Rs.6 lakhs as against the owner of the said car and its insurer viz., the respondents herein.

3.Before the Tribunal, the 2nd respondent-Insurance Company resisted the case of the claimant, by filing counter stating that they are not liable to pay the compensation amount.

4.In order to the prove the case, before the Tribunal, on the side of the claimant examined himself as P.W.2, besides examining four other witnesses as P.W.1, P.W.3 to P.W.5 and marked 35 documents as Ex.P.1 to Ex.P.35. On the side of the Insurance Company, two witnesses were examined as R.W.1 & R.W.2 and six documents were marked as Ex.R.1 to Ex.R.6.

5.The Tribunal, after analysing the entire evidence, has come to the conclusion that the accident is the result of the rash and negligent driving of the driver of the car bearing Reg.No.TN-09-AK-2165. By coming to such a conclusion, the Tribunal has made the calculation under different head and passed an award for a total sum of Rs.2,03,641/- as compensation, as against the claim of Rs.6 lakhs. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimant has come forward with the present appeal.

6.It is the submission of the learned counsel for the appellant/claimant that on account of the accident, the claimant had sustained fracture of left tibia and elbow. Immediately after the accident, he was admitted in PIMS hospital and after treatment, he was discharged on 10.12.2006 and thereafter, he was admitted in Vijaya Health Centre and he was given treatment as inpatient from 10.12.2006 to 29.12.2006 and surgery was done on 31.12.2006 and he was discharged on 03.01.2007 and thereafter, he was given treatment as inpatient for two days on 21.02.2007 and 22.02.2007 and surgery was done on 21.02.2007 in Vijaya Health Centre and again he took treatment as inpatient from 29.08.2007 to 01.09.2007. Due to the injuries sustained in the accident, he finds it difficult to walk, run and ride motorcycle. Further, the Doctor-P.W.5 has assessed the percentage of disability suffered by the claimant at 70%. But, inspite of the evidence of the Doctor-P.W.5, the Tribunal without assigning any valid reason has reduced the percentage of disability suffered by the claimant to 60% and awarded only a sum of Rs.2,000/- for each percentage of disability.

7.In this regard, the learned counsel for the appellant/claimant submitted that considering the nature of the injuries sustained by the claimant, the Tribunal ought to have applied multiplier method in awarding the compensation. Thus, the learned counsel for the appellant/claimant submitted that by

applying multiplier method, the compensation amount awarded by the Tribunal has to be enhanced.

8.Per contra, the learned counsel for the Insurance Company has made her submissions supporting the award passed by the Tribunal.

9.Keeping the submissions made on either side, We have carefully gone through the entire materials available on record and We find that on account of the accident, the claimant sustained fracture injuries. Considering the nature of the injuries sustained by the claimant, it cannot be said to be a total permanent disability. Under such circumstance, the question of applying the multiplier method does not arise in this case. However, We find that though the Doctor-P.W.5 had assessed the percentage of disability suffered by the claimant/victim at 70%, the Tribunal without assigning any valid reason has reduced the percentage of disability from 70% to 60%. That apart, the Tribunal has awarded only a sum of Rs.2,000/- for each percentage of disability, which appears to be on the lower side. We are, therefore, of the view that by fixing the percentage of disability suffered by the claimant/victim at 70% and by awarding a sum of Rs.3,000/- for each percentage of disability, the compensation amount awarded by the Tribunal under the head of Disability has to be modified. If a sum of Rs.3,000/- is awarded for each percentage of disability, the total amount comes to Rs.2,10,000/- (3000×70). Hence, a sum of Rs.1,20,000/- awarded by the Tribunal under the head of Disability is hereby enhanced to Rs.2,10,000/-.

10.That apart, it is seen that the Tribunal has awarded only a sum of Rs.10,000/- each under the heads of Transport and Extra-nourishment. Considering the long period of treatment undergone by the claimant and injuries sustained by the claimant, the sum of Rs.10,000/- awarded by the Tribunal for Transport is hereby enhanced to Rs.20,000/- each for the Transportation and Extra-nourishment respectively. Similarly, considering the nature of the injuries sustained by the claimant and the treatment undergone by the claimant, the sum of Rs.25,000/- for pain & Suffering awarded by the Tribunal appears to be on the lower side, hence, the same is hereby enhanced to Rs.1,00,000/-. Further, it is seen that the Tribunal has not awarded any amount for loss of amenities. On account of the injuries sustained by the claimant in the accident, he would find it difficult to do his day-to-day works as he was doing before the accident. Hence, a sum of Rs.25,000/- is hereby awarded under the head of loss of amenities. Similarly, the Tribunal has not awarded any amount for attender charges. Hence, a sum of Rs.25,000/- is hereby awarded for attender charges. The Tribunal has not awarded any amount for the loss of income during the period of treatment.

It is seen that the claimant has undergone treatment for nearly six months. Though it is claimed by the claimant that he was earning a sum of Rs.25,000/- per month by working as Administrative officer in ICICI Bank, it is would be appropriate to take a sum of Rs.6,500/- as loss of income per month during the period of treatment. Hence, a sum of Rs.39,000/- (6,500 x 6) is hereby awarded for loss of income during the period of treatment. The Tribunal has awarded a sum of Rs.38,641/- for medical expenses, which is supported by the medical bills. Hence, the same is hereby confirmed. Thus, the total compensation amount of Rs.2,03,641/- awarded by the Tribunal is hereby modified and enhanced to Rs.4,77,641/-. The break up details of the modified/enhanced compensation amount are as follows_

Disability (3000 x 70)	= Rs.2,10,000/-
Medical Expenses	= Rs. 38,641/-
Transportation	= Rs. 20,000/-
Extra-nourishment	= Rs. 20,000/-
Pain and Suffering	= Rs.1,00,000/-
Loss of Amenities	= Rs. 25,000/-
Attender Charges	= Rs. 25,000/-
Loss of income during the period of treatment (6,500 X 6)	= Rs. 39,000/-
Total	= Rs. 4,77,641/-

11.In fine, the appeal is partly allowed and the total compensation amount of Rs.2,03,641/- awarded by the Tribunal is hereby modified and enhanced to Rs.4,77,641/-. The 2nd respondent/Insurance Company is directed to deposit the entire modified/enhanced compensation amount, after deducting the amount if any already deposited, with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant/claimant is entitled to withdraw the same with accrued interest thereon by making necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar (CS VII)
//True Copy//

Sub Assistant Registrar

SSV

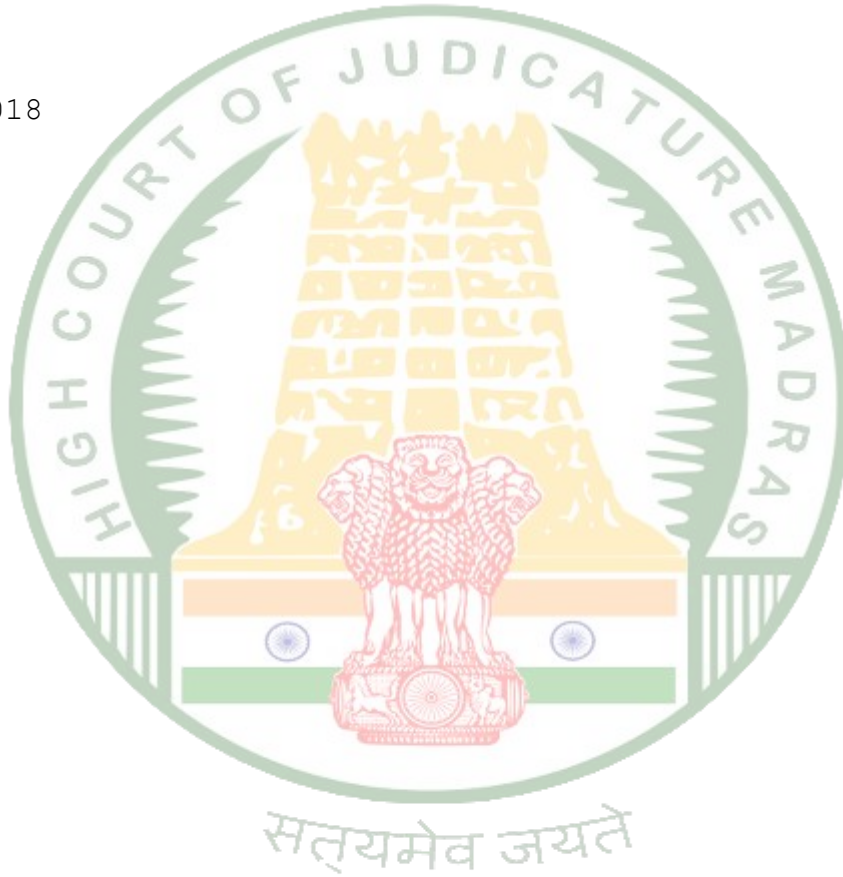
To,

The (Chief Judge, Small Causes Court),
Motor Accident Claims Tribunal
Chennai

+1 cc to Ms.M.Malar Advocate sr 18987
+1 cc to M/s.M.B.Gopalan Advocate sr 18931

C.M.A.No.2271 of 2016

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