

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2565 of 2018

Faisul Rahuman

.. Appellant/Petitioner

Vs.

1.J.Muthukumaran

2.Reliance General Insurance Co. Ltd.,
No.6, 6th Floor, Haddows Road,
Nungambakkam,
Chennai 600 006.

.. Respondents/Respondents

(R1 set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 13.08.2018, made in M.C.O.P.No.231 of 2016 on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal), Small Causes Court, Chennai.

For Appellant : Mr.S.Ravikumar

For R2 : Mr.S.Arun Kumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the award dated 13.08.2018, made in M.C.O.P.No.231 of 2016 on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal), Chennai.

2.The appellant is the claimant in M.C.O.P.No.231 of 2016 on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal), Chennai. He filed the said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the injuries suffered by him in the accident that took place on 01.11.2015.

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 car belonging to the 1st respondent and 2nd respondent, as the insurer of the vehicle is liable to pay a sum of Rs.1,53,500/- as compensation to the appellant.

4.Not being satisfied with the award dated 13.08.2018 made in M.C.O.P.No.231 of 2016, the appellant/claimant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the appellant sustained injuries and Doctor from the Government Hospital, Cuddalore has assessed the percentage of disability as 18%. The Tribunal ought to have applied the multiplier method for awarding compensation. The Tribunal ought to have awarded loss of future earning capacity by applying the multiplier method. The amounts awarded by the Tribunal are meager and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant has not let in any evidence, except his oral evidence to substantiate his claim to prove the loss of earning capacity. The appellant has not proved that he suffered functional disability and he is not entitled to compensation by applying the multiplier method. The amounts awarded by the Tribunal are not meager and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

8.From the materials on record, it is seen that the appellant was working as a sweet maker in a sweet stall. He suffered 18% disability as certified by the Doctor of Government Hospital, Cuddalore. The appellant has not examined any Doctor to prove that due to 18% disability, he has lost his earning capacity and is entitled to compensation by applying the multiplier method. In such circumstances, the amount awarded by the Tribunal on percentage basis is valid and there is no reason to modify the same and apply multiplier method. In the absence of any materials to show that the appellant suffered loss of earning capacity, the Tribunal has awarded a sum of Rs.16,000/- towards loss of earning capacity for two months. The appellant was in Government Stanley Hospital and Sri Sai Kiruba Hospital

totally for 16 days and he would have taken rest for three months after the treatment period. Hence, the sum of Rs.16,000/- granted towards loss of earning is modified to Rs.24,000/-. The appellant was taking treatment from 02.11.2015 to 19.11.2015 in Government Stanley Hospital, Chennai and 16.11.2015 to 23.11.2015 in Sri Sai Kiruba Hospital. The amounts awarded by the Tribunal towards future medical expenses is enhanced from Rs.10,000/- to Rs.20,000/-. The amounts awarded by the Tribunal under all other heads are just and reasonable 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.	Disability	54,000	54,000	confirmed
2.	Pain and suffering	20,000	20,000	confirmed
3.	Medical expenses	34,495	34,495	confirmed
4.	Transportation	5,000	5,000	confirmed
5.	Extra nourishment	10,000	10,000	confirmed
6.	Attender charges	4000	4000	confirmed
7.	Loss of earning	16,000	24,000	enhanced
8.	Future medical expenses	10,000	20,000	enhanced
	Total	1,53,495 rounded off to 1,53,500	1,71,495 rounded off to 1,71,500	Enhanced by Rs.18,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,53,500/- is hereby enhanced to Rs.1,71,500/-, with interest and costs. The 2nd respondent is directed to deposit the enhanced award amount with interest and cost, 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 is permitted to withdraw the award amount along with interest

and costs, by filing necessary applications before the Tribunal.
No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

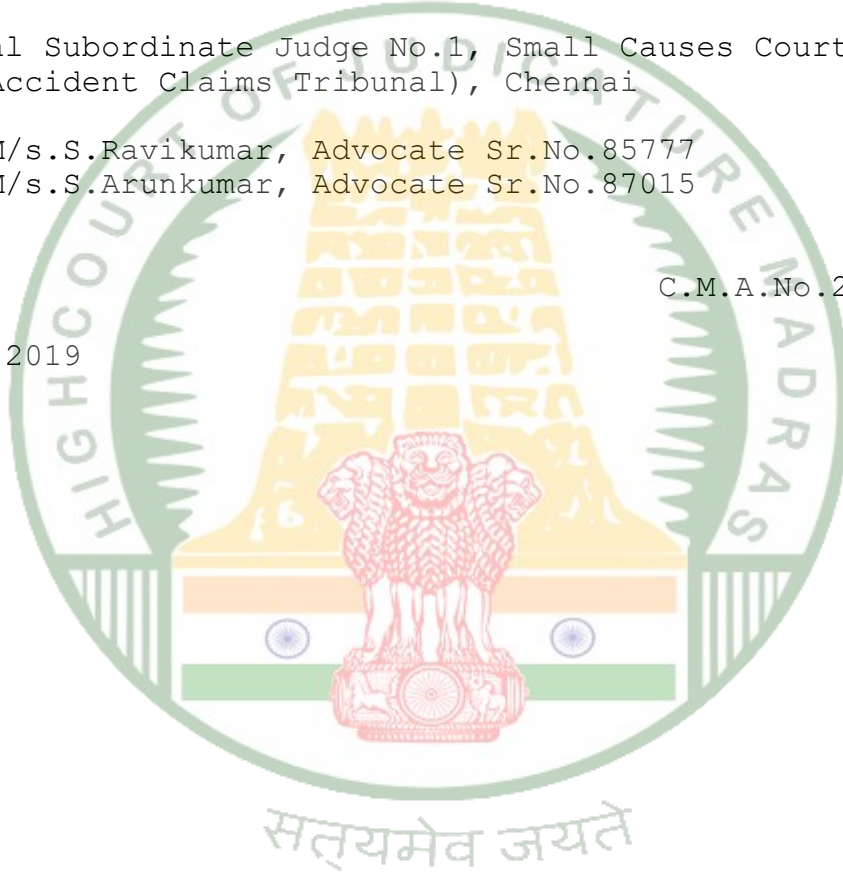
To

The Special Subordinate Judge No.1, Small Causes Court,
(Motor Accident Claims Tribunal), Chennai

+1 cc to M/s.S.Ravikumar, Advocate Sr.No.85777
+1 cc to M/s.S.Arunkumar, Advocate Sr.No.87015

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CNR (CO)
CSL/22.03.2019



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