

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1754 of 2015

M.Prithiviraj .. Appellant/Petitioner
Vs.

1.P.Selvam

(R1 remained exparte before Tribunal)

2.National Insurance Co.Ltd.,

No.751, Anna Salai,

Chennai - 600 002.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.02.2015 made in M.C.O.P.No.4688 of 2012 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai.

For Appellant : Mr.R.Arundattan for

Mr.C.Munusamy

For R2

: Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 06.02.2015 made in M.C.O.P.No.4688 of 2012 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.4688 of 2012 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.08.2012.

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 tanker lorry belonging to the first respondent and directed the second respondent-Insurance Company to pay a sum of Rs.2,49,143/- 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 the appellant sustained multiple fractures over right leg besides other severe injuries. He took treatment as in-patient for months together and underwent surgeries and incurred medical expenses to the tune of Rs.2,00,000/-. To prove the same, the appellant has filed documents and the same were marked as Exs.P1 to P5. The appellant was a driver aged 25 years and was earning a sum of Rs.10,000/- per month. Due to the injuries, he could not do the work as he was doing earlier. To prove the injuries and disability, the appellant examined P.W.2/Doctor, who deposed that the appellant suffered 45% disability. The Tribunal without any basis reduced the percentage of disability to 30% and granted a meagre sum of Rs.60,000/- towards disability. The Tribunal has not granted any amount towards attendant charges. The amounts granted by the Tribunal under other heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the appellant sustained only one fracture. He took treatment as in-patient only for six days from 02.08.2012 to 08.08.2012. The Tribunal considering the nature of injuries and evidence of P.W.2/Doctor, reduced the percentage of disability from 45% to 30% on the ground that the disability assessed by P.W.2/Doctor is excessive. The compensation granted by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

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

8. From the materials available on record it is seen that the appellant has contended that he was working as a driver and was earning a sum of Rs.10,000/- per month. In the accident he suffered multiple injuries and has taken treatment as in-patient for months together and continued his treatment as out-patient. The appellant failed to prove the same. The Tribunal considering the evidence of P.W.2/Doctor and disability certificate, reduced the percentage of disability from 45% to 30%, on the ground that disability assessed by P.W.2/Doctor is too high and awarded a sum of Rs.60,000/- for 30% disability at the rate of Rs.2,000/- per percentage. The reason given by the Tribunal for reducing the percentage of disability is not correct. A sum of Rs.2,000/- per percentage awarded by the Tribunal towards 30% disability is meagre and the appellant is entitled to compensation towards 45%

disability at the rate of Rs.3,000/- per percentage. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,35,000/- [Rs.3,000/- X 45]. The appellant contended that he was working as a driver and has produced Ex.P7/driving license. The Tribunal fixed a sum of Rs.5,000/- as monthly income, which is meagre. The accident occurred in the year 2012 and a sum of Rs.8,000/- is fixed as monthly income of the appellant. Due to the injuries and disability, the appellant would not have attended his work atleast for six months. The appellant is entitled to a sum of Rs.48,000/- [Rs.8,000/- X 6] towards loss of income. The appellant took treatment as in-patient for a period of six days from 02.08.2012 to 08.08.2012 and the Tribunal has not granted any amount towards attendant charges. A sum of Rs.10,000/- is granted by this Court towards attendant charges. A sum of Rs.7,000/- each awarded by the Tribunal towards transportation and extra nourishment are meagre and the same are hereby enhanced to Rs.10,000/- and Rs.15,000/- respectively. A sum of Rs.500/- awarded by the Tribunal towards loss of cloth is meagre and the same is hereby enhanced to Rs.2,000/-. The Tribunal has awarded a meager sum of Rs.5,000/- towards loss of amenities and the same is hereby enhanced to Rs.20,000/-. The amount awarded by the Tribunal under other heads 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.	Loss of income	15,000/-	48,000/-	Enhanced
2.	Transportation	7,000/-	10,000/-	Enhanced
3.	Extra nourishment	7,000/-	15,000/-	Enhanced
4.	Damage to cloth	500/-	2,000/-	Enhanced
5.	Medical expenses	1,24,643/-	1,24,643/-	Confirmed
6.	Loss of amenities	5,000/-	20,000/-	Enhanced
7.	Pain and suffering	30,000/-	30,000/-	Confirmed
8.	Disability	60,000/-	1,35,000/-	Enhanced
9.	Attendant charges	-	10,000/-	Granted

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
	Total	Rs.2,49,143/-	Rs.3,94,643/-	enhanced by Rs.1,45,500/-

9. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.2,49,143/- is hereby enhanced to Rs.3,94,643/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent-Insurance Company is directed to deposit the enhanced award amount 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. On such deposit, the appellant is permitted to withdraw the enhanced 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. The appellant is directed to pay the necessary Court fee, if any for the enhanced award amount now determined by this Court. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

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

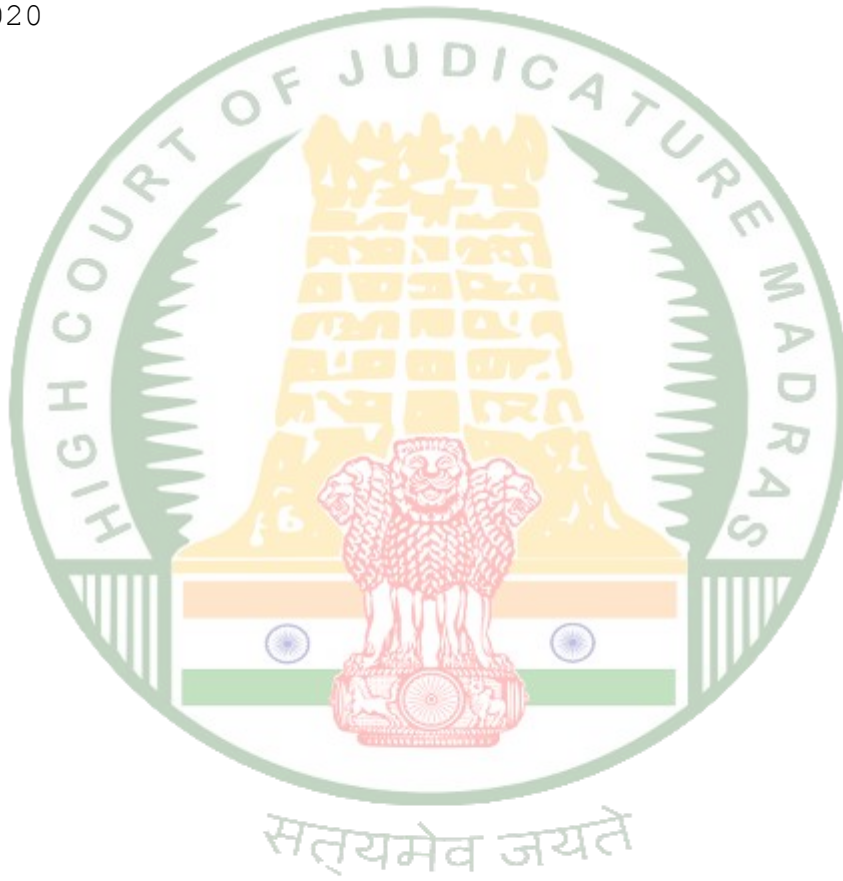
2. The Section Officer,
VR Section,
High Court,
Madras.

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+1 cc to Mr.C.Munusamy Advocate sr34960
+1 cc to Mr.J.Chandran Advocate sr34918

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