

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1947 of 2015

Subbaraj

.. Appellant

Vs.

1. M/s.Kun Motor Company Private Limited
D5, Ambattur Industrial Estate
Chennai-600 058.
 2. Bajaj Allianz General Insurance Company Limited
No.25/26, College road
Nungamakkam, Chennai-600 034.
- ... Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.02.2015 made in M.C.O.P.No.5831 of 2011 on the file of Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai.

For Appellant : Mr.F.Terry Chellaraja

For R1 : No appearance

For R2 : Mr.G.Vasudevan

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 12.02.2015 made in M.C.O.P.No.5831 of 2011 on the file of Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai.

2.The appellant is claimant in M.C.O.P.No.5831 of 2011 on the file of Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai. He filed the 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 06.07.2011. The Tribunal considering the pleadings, oral and documentary

evidence, held that the accident occurred only due to rash and negligent driving by the driver of the car belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.2,47,920/- as compensation to the appellant.

3. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking for enhancement of compensation.

4. The learned counsel appearing for the appellant/claimant contended that the appellant was running a tuition centre and was earning a sum of Rs.10,000/- per month. The Tribunal erred in fixing monthly income of the appellant as Rs.6,000/-, which is meagre. The appellant has suffered grade III compound fracture of right tibia, right segmental fracture of fibula, took treatment as in-patient for nearly six months and underwent surgery. P.W.2/Doctor has assessed the disability of the appellant at 45% and the Tribunal reduced the same to 40% stating that P.W.2 is not the doctor who treated the appellant, which is incorrect. The amount awarded by the Tribunal per percentage of disability is meagre. Due to the injuries, the appellant has lost his earning capacity and the Tribunal ought to have adopted multiplier method for awarding compensation towards permanent disability. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

5. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not proved that he suffered functional disability, he lost earning capacity and he could not do the work as he was doing earlier. In the absence of any documentary evidence to prove that the appellant suffered functional disability, the percentage method applied by the Tribunal is proper. P.W.2/Doctor is not the doctor who treated the appellant. Hence, the Tribunal rightly reduced the percentage of disability to 40% and awarded compensation. The Tribunal after considering the materials available on record, has awarded compensation, which is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and perused all the materials available on record.

7. From the materials available on record, it is seen that the appellant has contended that he was aged 65 years and was earning a sum of Rs.10,000/- per month by running a tuition centre. In the absence of any evidence with regard to avocation and income of the appellant, the Tribunal has fixed a sum of Rs.6,000/- as monthly income of the appellant and awarded a sum of Rs.20,000/- towards loss of income for a period of three to four months. The accident is of the year 2011 and the monthly income fixed by the Tribunal is meagre. In the accident, the appellant has sustained grade III compound fracture of right tibia and right segmental fracture of fibula. He took treatment as in-patient from 06.07.2011 to 10.09.2011 for fixing external fixator, 12.10.2011 to 25.10.2011 for removing external fixator, 08.11.2011 to 24.11.2011 for performing non-union and IL nailing and 28.12.2011 to 02.01.2011 and to prove the same, the appellant has marked Exs.P3 to P6/four discharge summaries. Considering the nature of injuries sustained by the appellant and the discharge summaries produced by him, it is seen that the appellant would not have attended his work atleast for twelve months. Therefore, a sum of Rs.7,500/- is fixed as monthly income and a sum of Rs.90,000/- (Rs.7,500/- X 12) is awarded towards loss of income for twelve months.

8. P.W.2/Doctor in his evidence has deposed that movement of the appellant's right leg has been reduced, due to pain and swelling, the appellant can walk only with the help of stick and assessed the disability of the appellant at 45%. The Tribunal has reduced the same to 40% on the ground that P.W.2 is not the doctor who treated the appellant and awarded a sum of Rs.1,800/- per percentage of disability, which is not proper. Considering the evidence of P.W.2/Doctor, the appellant is entitled to compensation for 45% disability. The appellant has not proved that he suffered functional disability and there is loss of earning capacity. Therefore, the percentage method adopted by the Tribunal is proper. But the amount awarded by the Tribunal per percentage of disability is meagre. The accident is of the year 2011 and a sum of Rs.1,35,000/- (Rs.3,000/- X 45%) is awarded towards disability by awarding Rs.3,000/- per percentage of disability. Considering the age of the appellant and period of treatment taken by him i.e., nearly 102 days as in-patient in the hospitals periodically on four spells, this Court enhances the amounts awarded by the Tribunal towards transportation, extra nourishment, damage to clothing, attendant charges, loss of amenities and pain & suffering to Rs.20,000/-, Rs.30,000/-, Rs.2,000/-, Rs.30,000/-, Rs.25,000/- and Rs.1,00,000/- respectively. The amount awarded by the Tribunal towards medical expenses is 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 or reduced
1.	Loss of income	20,000	90,000	Enhanced
2.	Transport to hospital	10,000	20,000	Enhanced
3.	Extra nourishment	15,000	30,000	Enhanced
4.	Damages to clothing	500	2,000	Enhanced
5.	Medical expenses	50,420	50,420	Confirmed
6.	Attendant charges	15,000	30,000	Enhanced
7.	Loss of amenities	15,000	25,000	Enhanced
8.	Pain and suffering	50,000	1,00,000	Enhanced
9.	Permanent disability	72,000	1,35,000	Enhanced
	Total	2,47,920	4,82,420	Enhanced by Rs.2,34,500/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,47,920/- is hereby enhanced to Rs.4,82,420/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. The 2nd 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/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

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Sd/-
Assistant Registrar(CO-MDU)

//True Copy//

Sub Assistant Registrar

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To

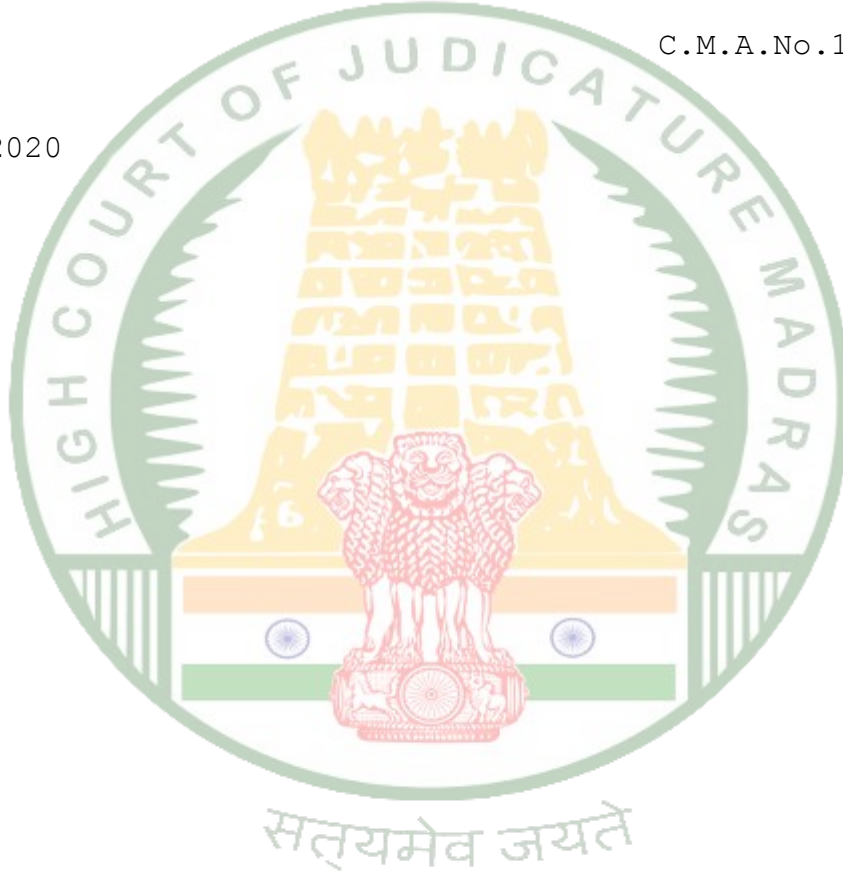
1. The III Judge
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.
2. The Section Officer
V.R.Section
High Court, Chennai.

+lcc to M/s.Malar, Advocate, S.R.No.101894

+lcc to Mr.G.Vasudevan, Advocate, S.R.No.101586

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MG(CO)
CS/02/09/2020



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