

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2138 of 2015

R. Paramasivam

..Appellant

Vs.

1.Mr.M. Chelladurai

[R1 Exparte before the Tribunal,
hence his presence may be dispense with]

2.The New India Assurance Company Limited,
Third Party Cell, Regional Office,
No.45, Moore Street, Parrys, Chennai-600 001.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree made in M.A.C.T.O.P.No.2298 of 2011, dated 20.06.2014, on the file of the Motor Accident Claims Tribunal [Special Judge – I], Chennai.

For Appellant : M/s A. Subadra
for M. Malar

For Respondent-2 : Mr.S. Manohar

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award and decree made in M.A.C.T.O.P.No.2298 of 2011, dated 20.06.2014, on the file of the Motor Accident Claims Tribunal [Special Judge – I], Chennai (for brevity, "the Tribunal").

2. The appellant/claimant filed M.A.C.T.O.P.No.2298 of 2011 on the file of the Motor Accident Claims Tribunal [Special Judge – I], Chennai, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.04.2010.

3. The Tribunal, considering the pleadings, oral and documentary evidence let in by the parties, held that the accident occurred due to rash and negligent driving by the driver of the motorcycle belonging to the 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.1,67,000/- as compensation to the appellant at the first instance and recover the same from the 1st respondent. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come out with the present appeal.

4. The learned counsel appearing for the appellant contended that the Tribunal failed to consider the evidence of the appellant as PW1 and Doctor as PW2 in proper perspective. According to him, though PW2-Doctor certified the disability of the appellant at 65%, the Tribunal reduced the same to 45%, without any reason. The learned counsel further contended that the appellant, as a driver, was earning a sum of Rs.10,000/- per month, whereas, the Tribunal fixed only a sum of

Rs.4,500/- per month notionally. In the event, the Tribunal took into account the entire income earned by the appellant, he would have got more compensation. The learned counsel also contended that the Tribunal ought to have awarded compensation separately under the heads "disability" and "loss of earning capacity". Thus, the learned counsel prayed for enhancement of compensation awarded by the Tribunal.

5. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not proved that he was a lorry driver and was earning a sum of Rs.10,000/- per month. Further, he has not produced any driving licence to support his avocation. As such, the Tribunal has fixed the notional income of the appellant at Rs.4,500/- per month. The learned counsel further contended that the appellant has not produced any oral and documentary evidence, with regard to his loss of earning capacity or loss of income. In such circumstances, the compensation awarded by the Tribunal is just and reasonable and prayed for dismissal of the appeal.

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

7. There is no dispute with regard to the liability of the second respondent/Insurance company to pay compensation to the appellant. The point for consideration is the quantum of compensation awarded by the Tribunal.

8. From the materials available on record, it is seen that PW2-Doctor has certified that the appellant sustained 65% disability, which contains two parts i.e., 45% for malunited fracture of right femur with non-union 2 inches shortening right leg and 20% for post traumatic head ache. However, the Tribunal has reduced the same to 40% + 5% respectively and awarded compensation only for 45% disability, without any reason. Considering the evidence of PW2, the appellant is entitled to compensation for 55% disability at the rate of Rs.2,000/- per percentage i.e., Rs.1,10,000/-. Accordingly, the compensation awarded by the Tribunal under the head "permanent disability" is enhanced from Rs.90,000/- to Rs.1,10,000/-.

9. It is the specific contention of the learned counsel for the appellant that the appellant is a lorry driver and to substantiate the same, he has produced Ex.P3 qualification card. However, the Tribunal has fixed the notional income at Rs.4,500/-per month, stating that the appellant has failed to prove his avocation and income. This Court is of the view that the amount so fixed by the Tribunal as the income of the appellant is very meager and the same is enhanced to Rs.6,500/- per month. At the same time, the appellant has not produced any document to prove that he lost his earning capacity due to the injuries sustained in the accident and hence, he is not entitled to any compensation under the head "loss of earning capacity". In view of the same, the compensation payable to the appellant under the head "loss of income" for six months is determined at Rs.39,000/- [Rs.6,500/- x 6] and accordingly, the same is awarded to the appellant.

10. Further, considering the fact that the appellant was in hospital as inpatient for ten days, this Court awards a sum of Rs.5,000/- towards attender charges. The compensation awarded by the Tribunal under other heads are not meager and the same 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/ reduced/ granted (Rs)
1.	Permanent Disability (45%)	90,000/-	1,10,000/-	enhanced
2.	Loss of income	27,000/-	39,000/-	enhanced
3.	Transportation	10,000/-	10,000/-	confirmed
4.	Extra nourishment	10,000/-	10,000/-	confirmed
5.	Medical Bills	5,000/-	5,000/-	confirmed
6.	Pain & Sufferings	25,000/-	25,000/-	confirmed
7.	Attender Charges	--	5,000/-	granted
	Total	1,67,000/-	2,04,000/-	enhanced by Rs.37,000/-

However, it is made clear that the appellant is entitled for the interest at the rate of 7.5% p.a. for the enhanced award amount.

11. In the result, the appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from Rs.1,67,000/- to Rs.2,04,000/- along with interest and costs. The respondents 1 & 2 are jointly and severally directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.2298 of 2011 within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is

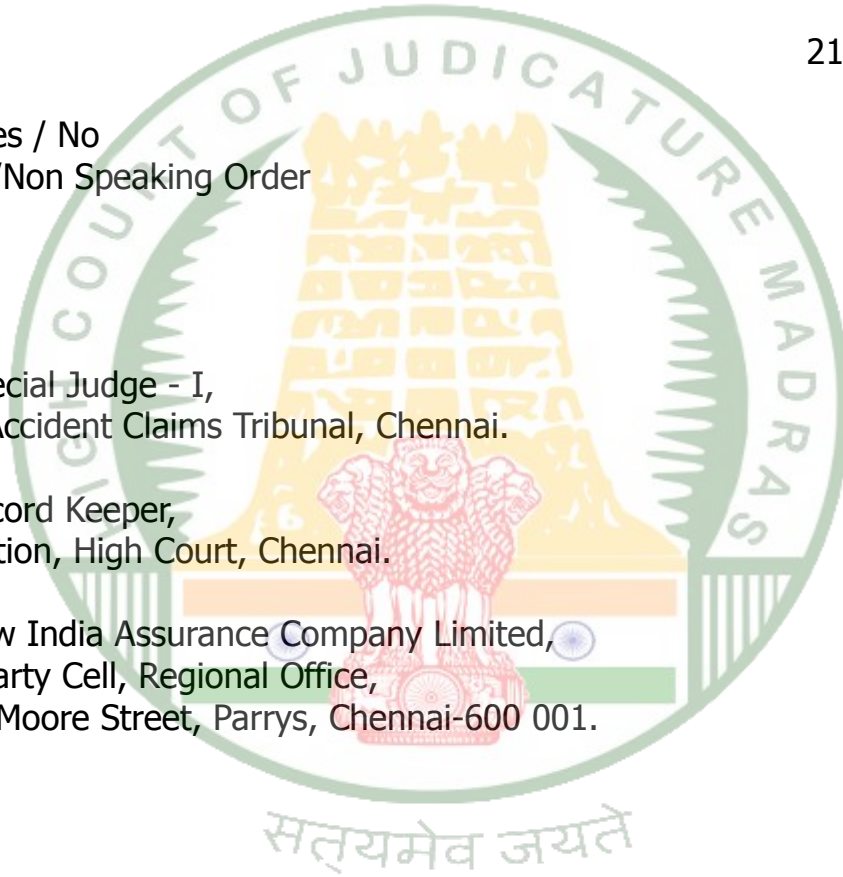
permitted to withdraw the award amount, less the amount already withdrawn, if any, by filing necessary application before the Tribunal. No costs.

21.01.2019

Index : Yes / No
Speaking/Non Speaking Order
msm

To

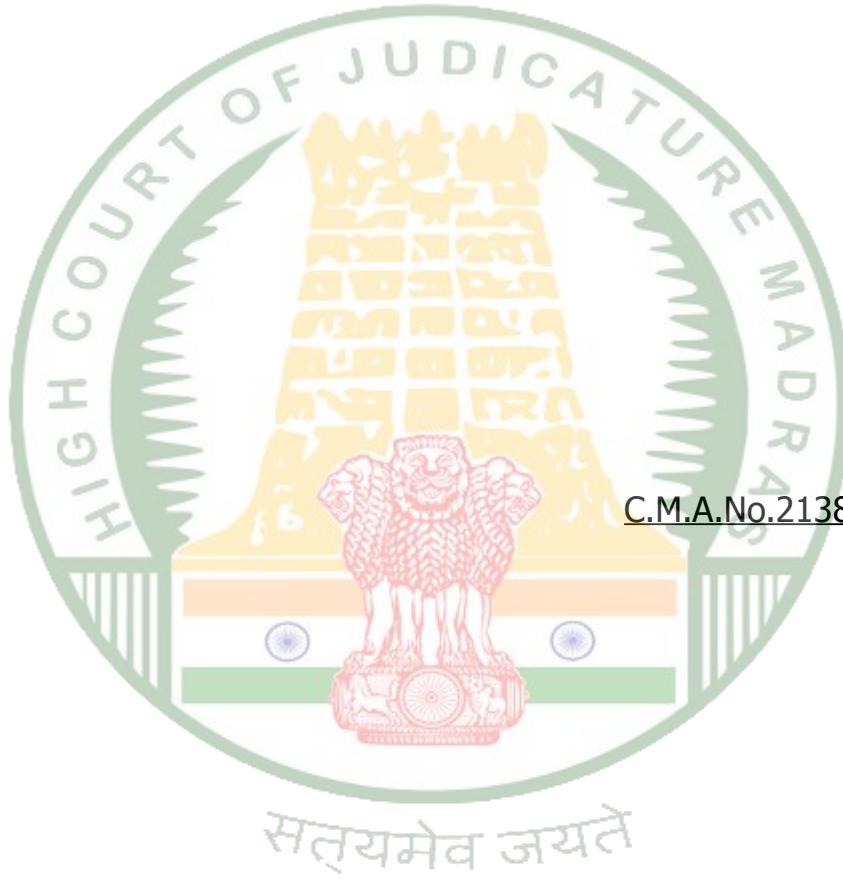
- 1.The Special Judge - I,
Motor Accident Claims Tribunal, Chennai.
- 2.The Record Keeper,
V.R.Section, High Court, Chennai.
- 3.The New India Assurance Company Limited,
Third Party Cell, Regional Office,
No.45, Moore Street, Parrys, Chennai-600 001.



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V.M.VELUMANI, J.

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C.M.A.No.2138 of 2018

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