

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 2153 of 2015

Shanmugasundaram

.. Appellant/Petitioner

Vs.

1.Country Wide Logistics,
No. 135, Poonamallee High Road,
Bhuvana Nursery Complex,
Velappanchavadi, Chennai 600 077.

2.Bajaj Allianz General Insurance Co., Ltd.,
No. 25/26, Price Towers, 4th floor,
College Road,
Chennai 600 006. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 07.04.2015, made in M.C.O.P.No. 4164 of 2010, on the file of the Special Sub Court No. II, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. K.V. Muthu Visakan

For Respondents: Mr. G. Vasudevan (for R2)
for R1 Exparte

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 07.04.2015, made in M.C.O.P.No. 4164 of 2010, on the file of the Special Sub Court No. II, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-claimant filed M.C.O.P.No. 4164 of 2010, on the file of the Special Sub Court No. II, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 25.09.2010.

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 Maxi Truck belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.4,00,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 07.04.2015, made in M.C.O.P.No. 4164 of 2010, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended that the appellant was working as Section Engineer in Southern Railways and earning a sum of Rs.50,000/- per month. Due to the accident, he suffered severe injury in the left leg, fracture of proximal tibia left, lateral condyle, injury in the chest and multiple injuries all over the body and plate was fixed. He took treatment as in-patient in MIOT Hospital till date. P.W.2-Doctor assessed disability of the appellant as 40%. The Tribunal without assigning any reasons, reduced the same to 20% and granted meagre amount of compensation under the head, disability. The Tribunal without considering the Salary slips marked as Ex.P6, erroneously fixed the monthly salary at Rs.43,008/- and granted very meagre amount towards loss of income. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal reduced the percentage of disability suffered by the appellant to 20% on the ground that the fracture in tibial bone is simple in nature and the fracture wound has healed as per Ex.P11, X-ray report and granted just compensation towards disability. The amounts awarded under different heads are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

8.From the materials on record, it is seen that the appellant contended that he was working as a Section Engineer in Southern Railways and earning a sum of Rs.50,000/- per month. The Tribunal considering the 1st pay slip of Ex.P6 series, rightly fixed the monthly income at Rs.33,713/- and granted

loss of income for three months. The same is not meagre. Due to the accident, he suffered severe injury in the left leg, fracture of proximal tibia left, lateral condyle and injury in the chest and multiple injuries all over the body. Plate was also fixed. P.W.2-Doctor assessed the disability of the appellant as 40%. The Tribunal erroneously reduced the percentage of disability suffered by the appellant to 20%, holding that the fracture is simple in nature. Considering the oral evidence of P.W.2 - Doctor, X-ray report and disability certificate marked as Exs.P11 and P12, the percentage of disability suffered by the appellant is fixed at 40%. The amount awarded by the Tribunal towards permanent disability is modified to Rs.1,20,000/- at the rate of Rs.3,000/- per percentage for 40% disability. The appellant has taken treatment in MIOT Hospital as in-patient from 25.09.2010 to 16.11.2010, which is evident from Exs.P2 and P4 - discharge summary and O.P. Chit respectively. The Tribunal has granted meagre amount towards attendant charges. The appellant is entitled to a sum of Rs.35,000/- towards the same. Considering the nature of injuries and the treatment taken, the amounts awarded by the Tribunal under the head, extra nourishment is meagre and the same is enhanced to Rs.20,000/-. The Tribunal has not awarded any amount towards damages to clothes. This Court grants a sum of Rs.2,000/- under the said head. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, 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 or enhanced or granted
1.	Partial permanent disability	60,000/-	1,20,000/-	Enhanced
2.	Transportation	10,000/-	10,000/-	Confirmed
3.	Extra nourishment	5,000/-	20,000/-	Enhanced
4.	Attendant charges	5,000/-	35,000/-	Enhanced
5.	Medical charges	1,05,000/-	1,05,000/-	Confirmed
6.	Pain and sufferings	40,000/-	40,000/-	Confirmed

7.	Loss of amenities	50,000/-	50,000/-	Confirmed
8.	Damages to clothes	-	2,000/-	Granted
9.	Loss of income	1,00,000/-	1,00,000/-	Confirmed
10.	Future medical expenses	25,000/-	25,000/-	Confirmed
	Total	4,00,000/-	5,07,000/-	Enhanced by Rs.1,07,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.4,00,000/- is enhanced to Rs.5,07,000/- along with interest and costs. The 2nd respondent Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No. 4164 of 2010, less the amount already deposited, if any. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.1,07,000/-. No costs.

Sd/-
Asst.Registrar

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Sub Asst. Registrar

gsa

To

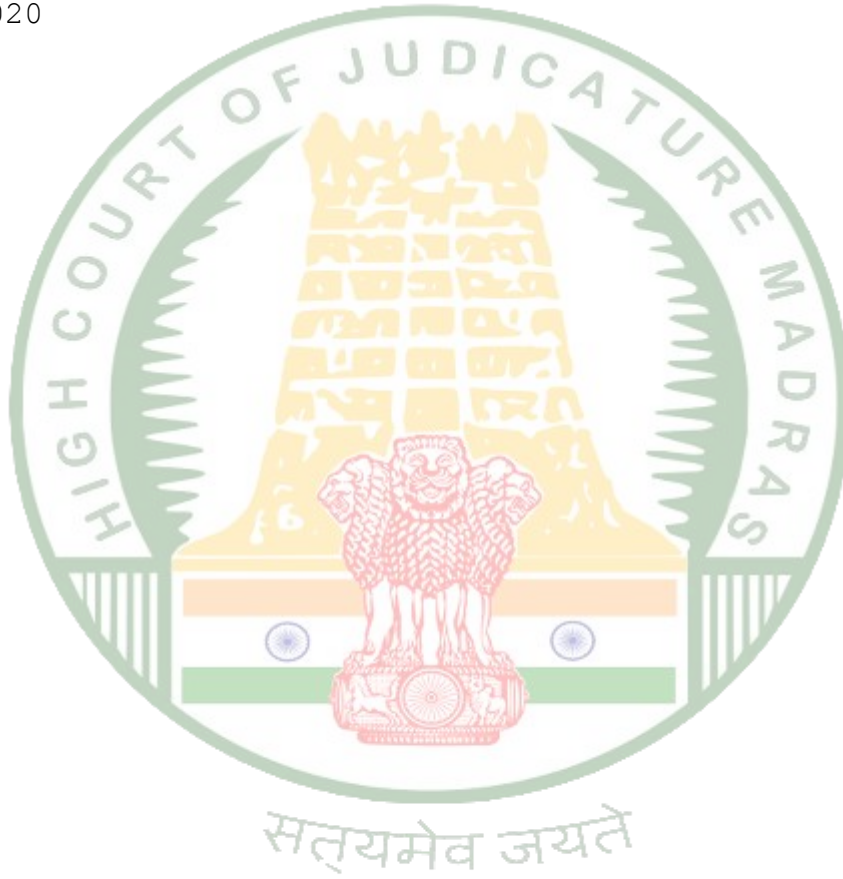
1.The Section Officer,
V.R Section,
High Court, Madras.

2.The II Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Chennai.

+1 cc to Mr.K.V.Muthuvisakan Advocate sr103452
+1 cc to Mr.G.Vasudevan Advocate sr 103216

C.M.A.No. 2153 of 2015

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