

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 2278 of 2016

Siva @ Sivanantham

.. Appellant/Petitioner

Vs.

1.P. Rajkumar

2.IFFCO TOKIO General Insurance Co. Ltd.,
No. 28, Old No. 195, North Usman Road,
T. Nagar, Chennai 600 017.

3.P. Rajkumar
(impleaded as per order in M.P. No. 1986 of 2015
dated 12.10.2015)

(3rd respondent was set exparte in the Trial Court. Hence
notice is dispensed with.) .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section
173 of Motor Vehicles Act, 1988, against the award dated
22.07.2016, made in M.C.O.P.No. 2752 of 2014, on the file of the
IV Court of Small Causes, (Motor Accident Claims Tribunal),
Chennai.

For Appellant : Mr. K. Suryanarayanan

For Respondents: No appearance (For R1)

Ms. K. Saraswathi (for R2)

J U D G M E N T

This appeal has been filed for enhancement of the
compensation granted by the award dated 22.07.2016, made in
M.C.O.P.No. 2752 of 2014, on the file of the IV Court of Small
Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellant is the claimant in M.C.O.P.No. 2752 of 2014, on the file of the IV Court of Small Causes, (Motor Accident Claims Tribunal), Chennai. He filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 18.03.2014.

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 Auto belonging to the 3rd respondent and dismissed the claim petition as not pressed against the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.4,07,200/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 22.07.2016, made in M.C.O.P.No. 2752 of 2014, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended that the appellant sustained Grade 3 B Supracondyle fracture of right femur, fracture of both bones right leg, fracture of 3rd, 4th and 5th Metatarsal bones. P.W.2-Doctor assessed partial and permanent disability of the appellant as 55%. The Tribunal erroneously reduced the same to 50% and awarded compensation towards disability, by awarding Rs.3,000/- per percentage of 55% disability. The Tribunal erred in not adopting the multiplier method in awarding compensation. For the injuries sustained in the accident, the appellant took treatment for 122 days in 5 different spells. The amounts awarded by the Tribunal towards attendant charges, transportation, extra nourishment and pain and suffering are very meagre. In any event, the total compensation awarded by the Tribunal is 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, considering the nature of injuries sustained by the appellant and the assessment of disability by P.W.2- Doctor as 55%, granted compensation towards disability by reducing the percentage of disability to 50%, on the ground that the appellant failed to mark any worksheet or guidelines to substantiate the assessment of percentage of disability. The same is not erroneous. The Tribunal considering all the materials on record, has granted excess compensation. The appellant is not entitled for any enhancement of the same 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. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

8. It is the contention of the appellant that he was working as a Sales Man and earning a sum of Rs.15,000/- per month. Due to the accident, he suffered severe head injury, Grade - II bone fracture and multiple injuries all over the body, for which P.W.2 - Doctor assessed 55% disability. The appellant failed to produce any material evidence to substantiate his claim that he sustained functional disability. In the absence of any evidence to prove the functional disability of the appellant, the Tribunal rightly awarded compensation under percentage method, but erroneously reduced the same to 50% on the ground that P.W.2- Doctor failed to mark worksheet and guidelines justifying the assessment of percentage of disability. The said reason is erroneous. Considering the nature of injuries sustained by the appellant, he is entitled to compensation towards disability, by awarding Rs.3,000/- per percentage disability. Hence, a sum of Rs.1,65,000/- is awarded under the said head. For the injuries sustained in the accident, the appellant has taken treatment as in-patient in Hospital for a period of 122 days, in five different spells. Considering the period of treatment, the attendant charges awarded by the Tribunal is meagre. Hence, the same is enhanced to Rs.1,00,000/- towards attendant charges. In the absence of any material evidence to prove the income of the appellant, the Tribunal fixed a sum of Rs.6,500/- per month as notional income. The accident is of the year 2014. The appellant is entitled to a sum of Rs.8,000/- per month towards notional income. The appellant was aged 25 years at the time of accident. The Tribunal failed to award any enhancement towards future prospects. The appellant is entitled to 40% enhancement towards future prospects. Hence, the notional income of the appellant is fixed at Rs.11,200/- per month [Rs.8,000/- + Rs.3,200/- (40% of Rs.8,000/-)]. The Tribunal has granted loss of income for a period of 6 months. The same is meagre. Considering the nature of injuries and the treatment taken for the same, the appellant would not have worked at least for a year and hence, he is entitled for loss of income for 12 months. Thus, a sum of Rs.1,34,400/- (Rs.11,200/- x 12) is awarded towards loss of income. Considering the intensity of the injuries, the appellant would have suffered more pain. The amounts awarded by the Tribunal towards pain and suffering, extra nourishment, damages to clothes, future medical expenses and loss of amenities are

meagre. The same are enhanced to Rs.1,00,000/- towards pain and suffering, Rs.50,000/- towards extra nourishment, Rs.3,000/- towards damages to clothes, Rs.25,000/- towards future medical expenses and Rs.25,000/- towards loss of amenities. 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.	Disability	1,50,000/-	1,65,000/-	Enhanced
2.	Pain and suffering	75,000/-	1,00,000/-	Enhanced
3.	Extra nourishment	10,000/-	50,000/-	Enhanced
4.	Transport to Hospital	20,000/-	20,000/-	Confirmed
5.	Damages to clothes	1,000/-	3,000/-	Enhanced
6.	Attendant charges	30,500/-	1,00,000/-	Enhanced
7.	Medical expenses	61,682/-	61,682/-	Confirmed
8.	Future medical expenses	10,000/-	10,000/-	Confirmed
9.	Loss of income	39,000/-	1,34,400/-	Enhanced
10.	Loss of amenities	10,000/-	25,000/-	Enhanced
	Total	4,07,182/-	6,69,082/-	
	Rounded off to	4,07,200/-	6,69,100/-	Enhanced by Rs.2,61,900/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.4,07,200/- is enhanced to Rs.6,69,100/- along with interest and costs. The 2nd respondent 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. 2752 of 2014. 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. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1.The IV Court of Small Causes,
(Motor Accident Claims Tribunal),
Ponneri.

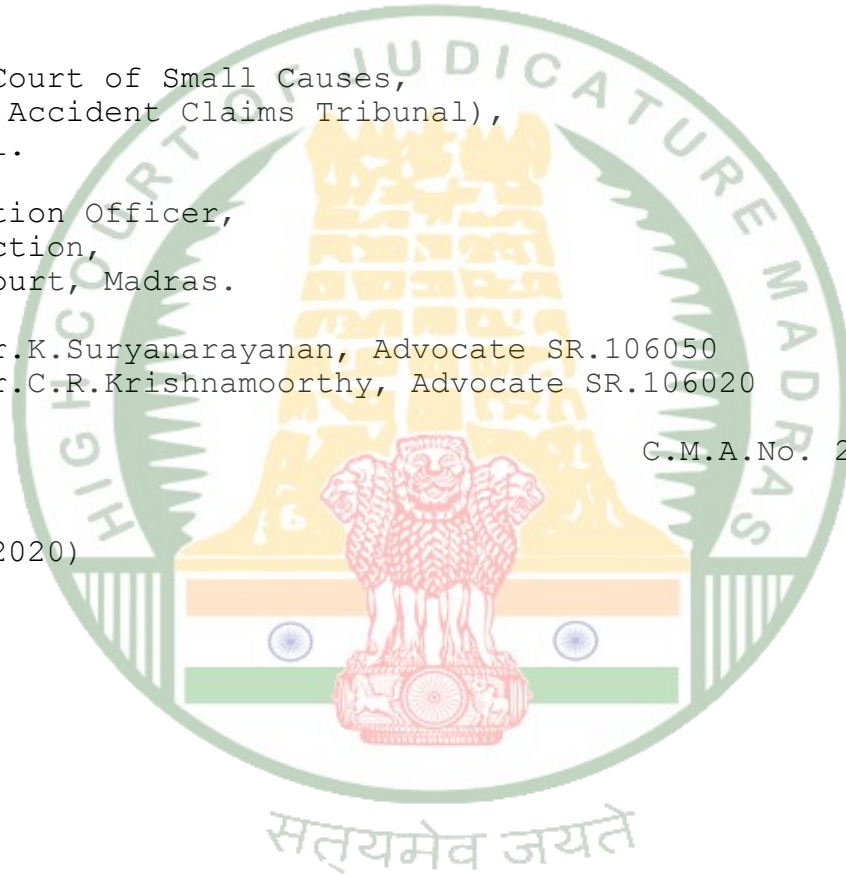
2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.K.Suryanarayanan, Advocate SR.106050

+1cc to Mr.C.R.Krishnamoorthy, Advocate SR.106020

C.M.A.No. 2278 of 2016

RJI (CO)
CB(08/09/2020)



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