

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.236 of 2016

Sugumar

.. Appellant/Claimant

Vs.

1.R.Kanagavalli

2.M/s.ICICI Lombard General Insurance Co. Ltd.,
140, Nungambakkam high road
Chennai-600 034. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 17.04.2015 made in M.C.O.P.No.3465 of 2013 on the file of Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai.

For Appellant : Ms.A.Subadra for Ms.M.Malar
For R2 : Mrs.R.Sreevidhya

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 17.04.2015 made in M.C.O.P.No.3465 of 2013 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.3465 of 2013 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.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 21.04.2013. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the two wheeler belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said two wheeler to pay a sum of Rs.2,40,787/- 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 enhancement of compensation.

4. The learned counsel appearing for the appellant/claimant contended that the appellant has sustained fracture of shaft of femur on the right side, distal radius fracture on the right and multiple grievous injuries all over the body. He took treatment as in-patient in the hospital from 25.04.2013 to 18.05.2013 and 22.06.2013 to 27.06.2013, underwent surgery and screws & nails were fixed. P.W.2/Doctor has assessed the disability of the appellant at 65%. The Tribunal without assigning any reason, has reduced the same to 60%. The appellant was working as an auto driver and was earning a sum of Rs.12,000/- per month. The Tribunal erred in fixing only a meagre sum of Rs.6,000/- as monthly income of the appellant and awarded compensation towards loss of income only for a period of three months. Due to the injuries, the appellant has difficulty in walking, climbing steps, lifting weight and he could not do the work as he was doing earlier. The Tribunal ought to have awarded more compensation towards loss of income and adopted multiplier method while awarding compensation towards permanent disability. The appellant was aged 45 years at the time of accident and the Tribunal ought to have awarded enhancement towards future prospects. The appellant is now taking treatment for his injury and he had interlocking of nails on his right femur. The Tribunal has not awarded any amount towards future medical expenses. 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 and therefore, the percentage method applied by the Tribunal is proper. In the absence of evidence with regard to avocation and monthly income of the appellant, the Tribunal has rightly fixed a sum of Rs.6,000/- as monthly income of the appellant and the same does not warrant interference. 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 sustained shaft of femur fracture on the right side, distal radius fracture on the right and took treatment as in-patient in the hospital from 25.04.2013 to 18.05.2013 and 22.06.2013 to 27.06.2013, underwent surgery and screws & nails were fixed. P.W.2/Doctor has assessed the disability of the appellant at 65%. The Tribunal reduced the same to 60% holding that P.W.2 is not the doctor who treated the appellant, he has not followed the guidelines and awarded a sum of Rs.2,000/- per percentage of disability. The reason given by the Tribunal for reducing the percentage of disability is not proper. The appellant is entitled to compensation for 65% 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 2013 and the appellant is entitled to a sum of Rs.3,000/- per percentage of disability. A sum of Rs.1,95,000/- ($\text{Rs.3,000/-} \times 65\%$) is granted towards disability. According to the appellant, he was an auto driver and was earning a sum of Rs.12,000/- per month. 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 months, which is not proper. The accident is of the year 2013 and the monthly income fixed by the Tribunal is meagre. Considering the nature of injuries sustained by the appellant and that he was an auto driver, he would not have worked atleast for a period of six months. This Court fixes a sum of Rs.8,000/- as monthly income of the appellant and a sum of Rs.48,000/- ($\text{Rs.8,000/-} \times 6$) is awarded towards loss of income for a period of six months. The amounts awarded by the Tribunal towards extra nourishment, damage to clothes, attendant charges, loss of amenities and pain & suffering are meagre and considering the nature of injuries sustained and period of treatment taken by the appellant, this Court enhances the same to Rs.10,000/-, Rs.3,000/-, Rs.20,000/- and Rs.20,000/- respectively. Though the appellant has contended that he is now taking treatment for his injuries, he has not produced any document to prove the same. Therefore, the appellant is not entitled any amount towards future medical expenses. The amounts awarded by the Tribunal under other heads are just and reasonable and the same are 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	48,000	Enhanced
2.	Transport to hospital	7,000	7,000	Confirmed
3.	Extra nourishment	7,000	10,000	Enhanced
4.	Damages to clothing	500	3,000	Enhanced
5.	Medical expenses	33,287	33,287	Confirmed
6.	Attendant charges	3,000	20,000	Enhanced
7.	Loss of amenities	10,000	20,000	Enhanced
8.	Pain and suffering	40,000	40,000	Confirmed
9.	Permanent disability	1,20,000	1,95,000	Enhanced
	Total	2,40,787	3,76,287	Enhanced by Rs.1,35,500 /-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,40,787/- is hereby enhanced to Rs.3,76,287/- 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.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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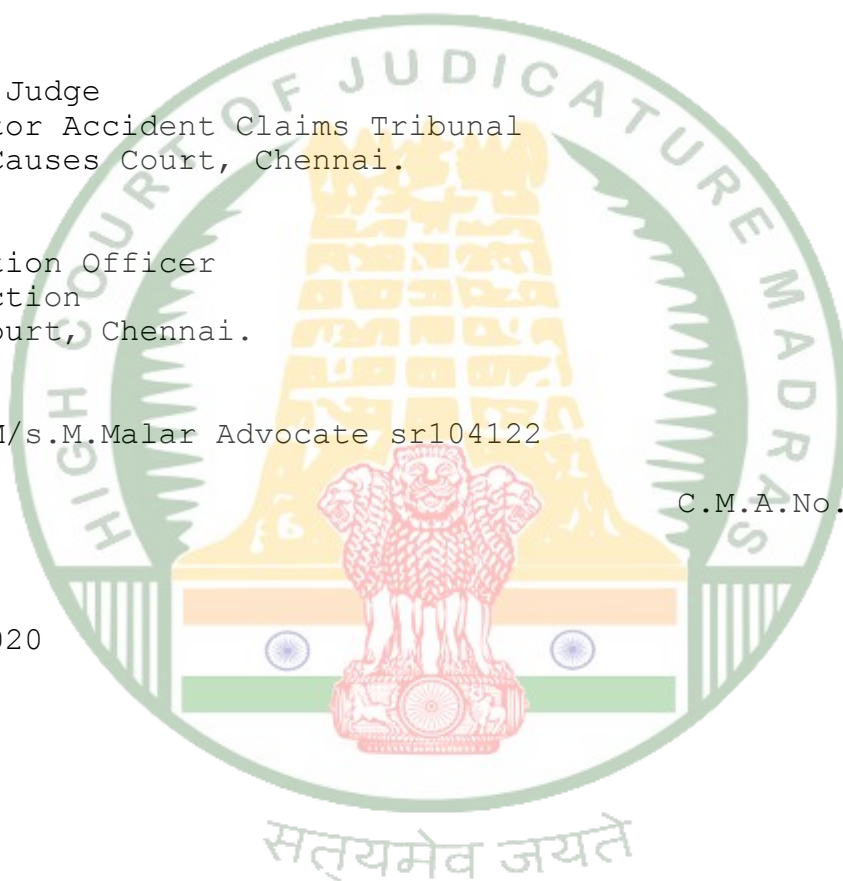
1.The III Judge
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

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

+1 cc to M/s.M.Malar Advocate sr104122

C.M.A.No.236 of 2016

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