

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.922 of 2015

R.Murali

... Appellant/Petitioner

Vs

1.V.Vijay Keerthi

2.National Insurance Company Ltd.,

751, Anna Salai,

Chennai - 600 002.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.01.2012 made in M.C.O.P.No.1609 of 2007 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Ms.Ramya V.Rao

For R2 : Mr.S.Vadivel

NA : R1

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 31.01.2012 made in M.C.O.P.No.1609 of 2007 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

2.The brief facts is as follows:

On 27.03.2006 at about 23.00 hours, when the petitioner was travelling in Eicher Mini Lorry bearing Reg.No.TN-07-AW-2505 at Lloyds Road, opposite to D.A.V.School, Gopalapuram, Chennai proceeding from West to East direction, the driver of the said vehicle drove the same in a rash and negligent manner and hit on

the platform and then tree, thereby the petitioner sustained grievous injuries. Thus the petitioner claimed a sum of Rs.2,50,000/- as compensation for the injuries sustained by him in the accident.

3.The 2nd respondent/Insurance Company denied the mode of accident as alleged in the claim petition. The respondent/Insurance Company contended that the lorry belongs to the 1st respondent and he was not in possession of any valid vehicular documents, valid insurance policy and the driver of the vehicle also did not have valid license at the time of the accident. There is no valid policy at the time of the alleged accident. The petitioner failed to prove the avocation, age, occupation and income of the injured/petitioner. The sum awarded by the Tribunal under different heads are excessive and prayed for dismissal of the claim petition.

4.The Tribunal observed the contentions raised by both side by way of evidence and documents and has given a finding that the accident occurred only due to the rash and negligent driving on the part of the driver of the said Eicher Mini Lorry and awarded a sum of Rs.62,000/- as compensation under the following heads:

Loss of income for one month	Rs.4,000/-
Transportation	Rs.1,000/-
Extra nourishment	Rs.1,000/-
Medical expenses	Rs.1,000/-
Pain and suffering	Rs.5,000/-
Disability of 25% at the rate of Rs.2,000/- per disability	Rs.50,000/-
Total	Rs.62,000/-

Aggrieved against the said award the claimant has preferred this appeal for enhancement of compensation.

5.In the grounds of appeal, the appellant has contended that the sum awarded by the Tribunal towards compensation at Rs.62,000/- against the claim of Rs.2,50,000/- is very much on the meagre side. The Tribunal when rightly fixing the negligence on the 1st respondent driver, failed to award proper compensation. The appellant was working as a load man by profession sustained fracture of left humerus and fracture of Ulna M3 and multiple injuries. There is malunion of bones and difficulty in working with the left hand. The appellant is unable to continue his avocation as before. The Tribunal has also failed to appreciate the evidence of PW2/Doctor who assessed disability of the appellant at 45% and has given evidence that the appellant would find it difficult to do his

work. But the Tribunal has reduced the percentage of disability at 25%. Further contended that the Tribunal should have taken 12 months salary towards loss of income. The Tribunal failed to award proper compensation under mental agony, loss of expectation of life, loss of amenities, physical discomfort, attendant charges etc. considering the injuries sustained and the period of treatment taken by the appellant. The Tribunal should have taken 2nd schedule as guide for fixing the compensation for permanent disability. The sum awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Heard Ms. Ramya V. Rao, learned counsel appearing for the appellant and Mr. S. Vadivel, learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

7. On perusal of the records, it is seen that the claimant sustained injuries due to the said accident. The 2nd respondent while objecting the sum sought by the appellant by way of enhancement, argued that the sum awarded by the Tribunal is very reasonable. It is seen that Ex.P1 that the injured/appellant was treated in the Government Royapettah Hospital and he sustained fracture soft of left humerus and fracture of left ulna M/3rd. Further Ex.P4 is the disability certificate issued by PW2/Doctor who also deposed that the injured person sustained 45% partial permanent disability because of the fracture is united with widening, shoulder movement reduced 30 degree and the appellant/claimant is facing difficulty to work with left hand. Further it is observed that the appellant/claimant was working as a load man and was earning a sum of Rs.4,000/- per month. The loss of income for one month has been taken by the Tribunal at Rs.4,000/- per month. The disability was also taken by the Tribunal at 25% against the assessment made by the PW2/Doctor, these aspects are very much aggrieved by the appellant. Hence, considering the nature of injuries and the assessment made by PW2/Doctor, this Court is inclined to enhance the sum awarded under the head disability. Accordingly, considering the year of the accident, which is of the year 2006, this Court takes the disability assessed by the Doctor i.e. 45% and by taking Rs.2,000/- per percentage, grants a sum of Rs.90,000/- (Rs.2,000/- x 45%) which is proper and reasonable. Likewise, the sum awarded by the Tribunal under the head towards loss of income, transportation, extra nourishment and pain & suffering are also enhanced to Rs.9,000/-, Rs.2,000/-, Rs.5,000/- and Rs.20,000/- respectively under those heads. It is seen from the award that the Tribunal has not awarded any amount towards attendant charges and loss of amenities hence this Court awards a sum of Rs.5,000/- and Rs.15,000/- respectively under those heads. 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)
1.	Loss of income	Rs.4,000/-	Rs.9,000/-
2.	Transportation charges	Rs.1,000/-	Rs.2,000/-
3.	Extra nourishment	Rs.1,000/-	Rs.5,000/-
4.	Medical expenses	Rs.1,000/-	Rs.1,000/-
5.	Pain and suffering	Rs.5,000/-	Rs.20,000/-
6.	Disability	Rs.50,000/-	Rs.90,000/-
7.	Attender charges	-	Rs.5,000/-
8.	Loss of amenities	-	Rs.15,000/-
	Total	Rs.62,000/-	Rs.1,47,000/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.62,000/- is enhanced to Rs.1,47,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

9. The appellant/claimant is directed to 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.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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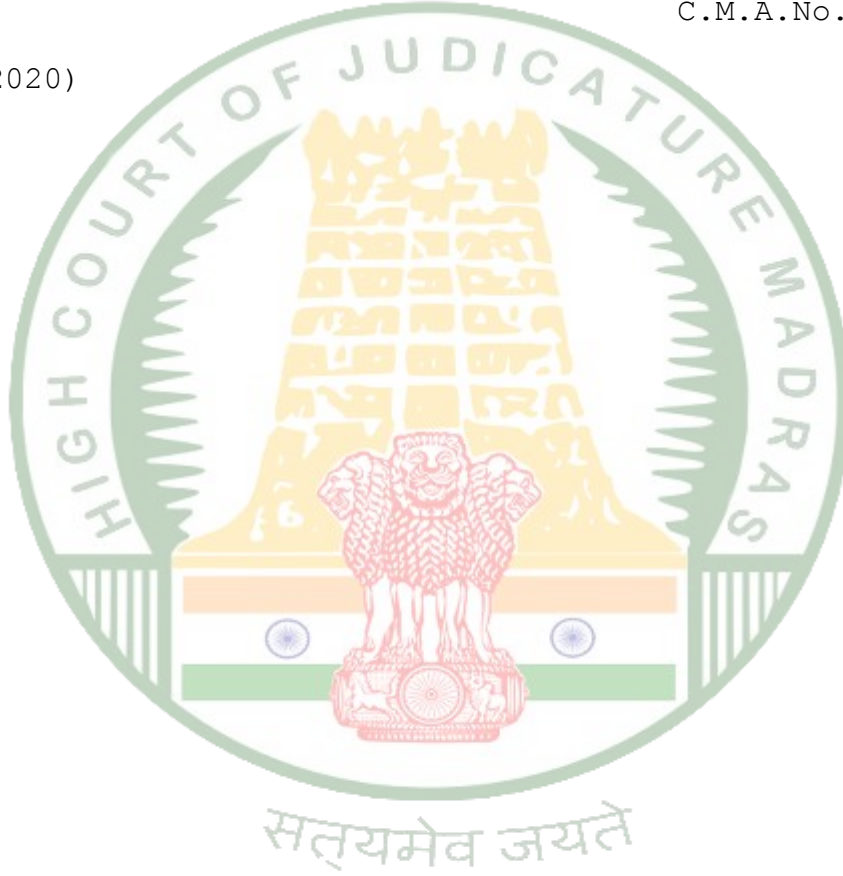
1.The III Judge,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

+1cc to Mr.S.Vadivel, Advocate, S.R.No. 65221

+2cc to Mr.A.N.Viswanatha Rao, Advocate, S.R.No. 65705

C.M.A.No.922 of 2015

PVS (CO)
GN(26/06/2020)



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