

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1639 of 2019

C.Nagarajan

.. Appellant/Petitioner

Vs.

1.R.suresh

2.The United India Insurance Co. Ltd.,
38, Anna Salai, Chennai 2. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 27.07.2000, made in M.C.O.P.No.2132 of 1998, on the file of the VI Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.K.R.Ponnusamy
for M/s.Anand and Surya

For R2 : Mr.D.Bhaskaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant seeking enhancement of the compensation granted by the Tribunal in the award dated 27.07.2000, made in M.C.O.P.No.2132 of 1998, on the file of the VI Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant/claimant filed M.C.O.P.No.2132 of 1998, on the file of the VI Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.1,50,000/- as compensation for the injuries sustained by him in the accident that took place on 15.04.1998.

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 rickshaw belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.72,000/- as compensation to the appellant.

4. Not being satisfied with the amounts granted by the Tribunal in the award dated 27.07.2000, made in M.C.O.P.No.2132 of 1998, the appellant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that the appellant was working as a chief cook in Kanchi Hotel and was earning a sum of Rs.3,500/- per month. The Tribunal erroneously fixed a sum of Rs.3,000/- per month as monthly income. The appellant suffered 45% partial permanent disability. The Tribunal erred in awarding only a sum of Rs.25,000/- for the disability. Due to the injuries and disability suffered, the appellant could not do the work as he was doing earlier and lost his earning capacity and could not do the work for one year. The Tribunal erred in awarding only a sum of Rs.25,000/- towards loss of income and Rs.5,000/- towards loss of earning capacity. 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 considering all the materials on record, has granted compensation under different heads, which 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 the 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 a chief cook in Kanchi Hotel and was earning a sum of Rs.3,500/- per month. He failed to substantiate the said contention. The Tribunal in the absence of any evidence, fixed a sum of Rs.3,000/- per month as the notional income of the appellant. The accident is of the year 1998 and the amounts fixed by the Tribunal as notional income is not meagre. The appellant has not proved that he suffered functional disability and loss of earning power. In view of the same, the appellant is not entitled for compensation by applying the multiplier method. P.W.2-Doctor has certified that the appellant suffered 45% disability. The Tribunal has granted only a sum of Rs.25,000/- as compensation for the disability. The same is meagre. The appellant is entitled to Rs.45,000/- towards disability at the rate of Rs.1000/- per percentage for 45%. The appellant has taken treatment in hospital from 15.04.1998 to 30.04.1998 for a period of 16 days. The Tribunal failed to grant any amount towards attender charges and loss of amenities. Hence, a sum of Rs.5,000/- and Rs.10,000/- are granted towards the said heads respectively. The amounts granted towards pain and suffering and extra nourishment are very meagre. The same

are enhanced to Rs.10,000/- and Rs.5,000/- respectively. The amount granted by the Tribunal towards other heads are just and reasonable and hence, they are confirmed hereby. 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.	Loss of earning capacity	5,000/-	5,000/-	confirmed
2.	Transportation	2,500/-	2,500/-	confirmed
3.	Extra nourishment	2,000/-	5,000/-	Enhanced
4.	Damages to cloth	500/-	500/-	Confirmed
5.	Pain and suffering	7,000/-	10,000/-	Enhanced
6.	Disability	25,000/-	45,000/-	enhanced
7.	Medical expenses	5,000/-	5,000/-	Confirmed
8.	Loss of income	25,000/-	25,000/-	confirmed
9.	Loss of amenities	-	10,000/-	granted
10.	Attender charges	-	5,000/-	granted
	Total	72,000/-	1,13,000/-	Enhanced by Rs.41,000/-

9. In the result, the appeal is partly allowed and award granted by the Tribunal at Rs.72,000/- is enhanced to Rs.1,13,000/- along with interest and costs. The appellant is entitled to interest at the rate of 7.5% per annum for the enhanced award amount. The 2nd respondent is directed to deposit the enhanced award amount 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, to the credit of M.C.O.P.No.2132 of 1998. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount already withdrawn

if any, by filing necessary applications before the Tribunal. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

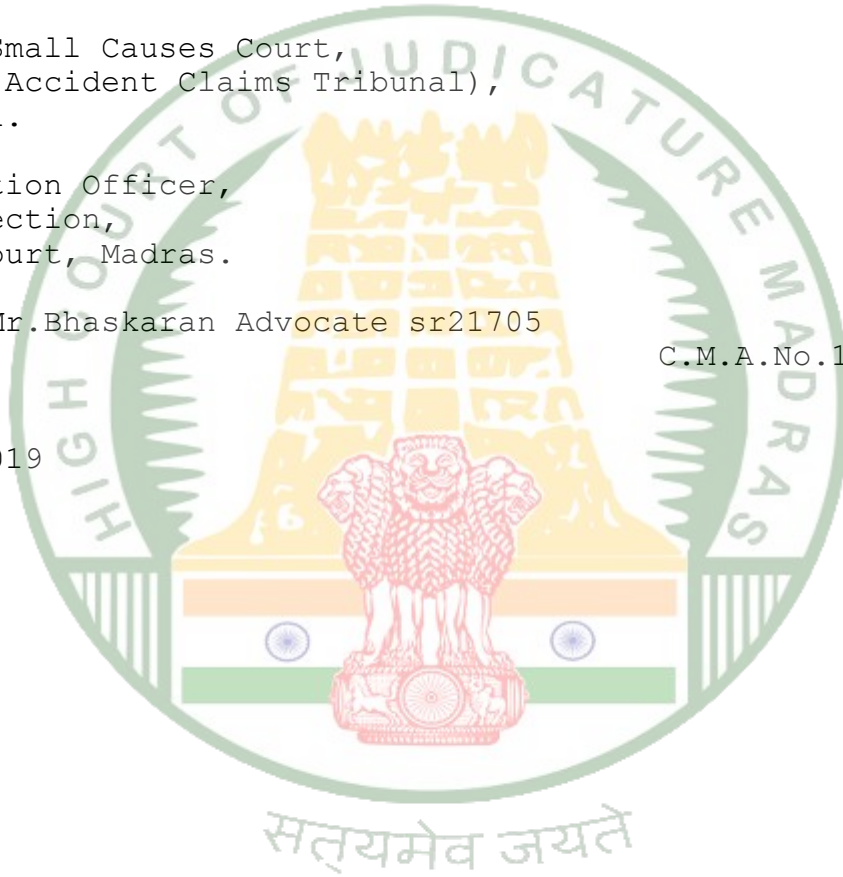
1.The VI Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

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

+1 cc to Mr.Bhaskaran Advocate sr21705

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