

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.189 of 2018

D.Sundaramoorthy

.. Appellant

Vs.

1.P.Nagappan
(was set exparte in the Trial Court)

2.Reliance Gl. Insurance Co. Ltd.,
Reliance House, Haddows Road,
Nungambakkam, Chennai - 600 034. ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.10.2017 made in M.C.O.P.No.6933 of 2013 on the file of the Motor Accident Claims Tribunal, IV Judge, III Court of Small Causes, Chennai.

For Appellant : Ms.P.T.Saleem Fathima

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 24.10.2017 made in M.C.O.P.No.6933 of 2013 on the file of the Motor Accident Claims Tribunal, III Judge, Court of Small Causes, Chennai.

2.By consent of both parties, the appeal is taken up for final disposal at the stage of admission itself.

3.The appellant is claimant in M.C.O.P.No.6933 of 2013 on the file of the Motor Accident Claims Tribunal, III Judge, Court of Small Causes, Chennai. He filed the said claim petition claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained by him in the accident that took place on 28.08.2013. 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 car belonging to 1st

respondent and directed the 2nd respondent-Insurance Company being the insurer of the said car to pay a sum of Rs.1,40,700/- as compensation to the appellant. 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 contended that the appellant is a retired head constable and was working as a car driver, due to the accident he suffered multiple injuries and was in hospital. He has taken treatment at B.M.Orthopedic hospital and then he was admitted into M.N.Orthopedic hospital as in-patient from 28.08.2013 to 02.09.2013. He has taken continuous treatment at the same hospital as out-patient on 03.09.2013 and 09.12.2013. P.W.2 - Doctor assessed that the appellant has suffered 30% of disability. The Tribunal erroneously reduced the percentage of disability to 25%. A sum of Rs.24,000/- is awarded towards loss of income and the amounts awarded by the Tribunal towards transportation, extra nourishment, damages to cloth, attendant charges and loss of amenities are meagre and prayed for enhancement of compensation.

5.Though notice was served on the 2nd respondent-Insurance Company and their name is printed in the cause list, there is no representation on behalf of them either in person or through counsel.

6.Heard the learned counsel appearing for the appellant 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 is a retired head constable and was working as a car driver. The appellant was aged 64 years at the time of the accident and was earning a sum of Rs.12,000/- per month. The Tribunal accepted the monthly income of the appellant and granted Rs.24,000/- towards loss of income. P.W.2-Doctor assessed that the appellant sustained 30% of disability. The Tribunal has reduced the percentage of disability to 25%. P.W.2-Doctor has not assessed the percentage of disability to whole body and the Tribunal granted compensation at Rs.75,000/- at the rate of Rs.3,000/- per percentage of disability. The reason given by the Tribunal is not correct. The appellant is entitled to 30% of disability. A sum of Rs.90,000/- is granted towards disability (30 x 3,000). The appellant has taken treatment in hospital for five days as in-patient and suffered disability. The amounts awarded by the Tribunal under the heads of extra nourishment, transport to hospital, damages to cloth,

attender charges, loss of income and loss of amenities are meagre and hence, the same are enhanced to Rs.10,000/-, Rs.5,000/-, Rs.1,000/-, Rs.10,000/-, Rs.36,000/- and Rs.10,000/- respectively. The amounts awarded by the Tribunal under other heads 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	75,000	90,000	Enhanced
2.	Pain and suffering	25,000	25,000	Confirmed
3.	Extra nourishment	2,500	10,000	Enhanced
4.	Transport to hospital	2,500	5,000	Enhanced
5.	Damages to cloth	500	1,000	Enhanced
6.	Attender charges	1,200	10,000	Enhanced
7.	Medical expenses	5,000	5,000	Confirmed
8.	Future medical expenses	2,500	2,500	Confirmed
9.	Loss of income	24,000	36,000	Enhanced
10.	Loss of amenities	2,500	10,000	Enhanced
	Total	Rs.1,40,700/-	Rs.1,94,500/-	Enhanced by Rs.53,800/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,40,700/- is hereby enhanced to Rs.1,94,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

mtl

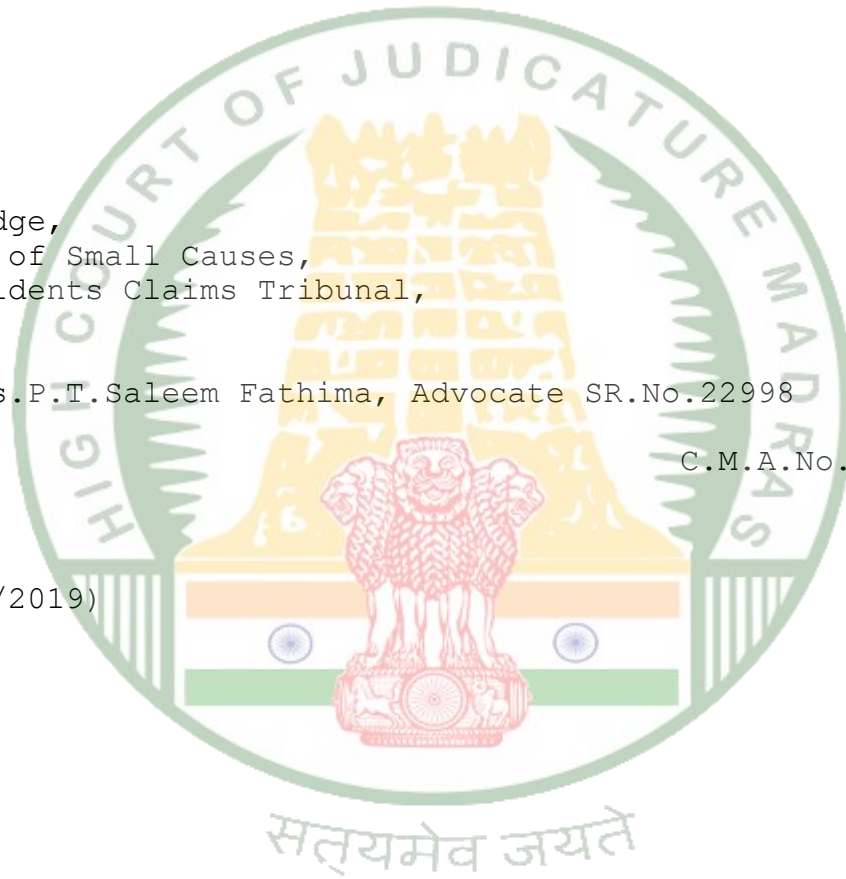
To

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

+1cc to Ms.P.T.Saleem Fathima, Advocate SR.No.22998

C.M.A.No.189 of 2018

KS(CO)
GMY(29/05/2019)



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