

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.430 of 2018

R.Parthasarathy

... Appellant /Petitioner

Vs.

1.D.Palayam

(Since R1 remained exparte before  
the Tribunal his presence may be dispensed with)

2.Royal Sundaram Alliance Insurance Company Limited,  
Subramanian Building, 2<sup>nd</sup> Floor,  
No.1, Club House Road,  
Anna Salai,  
Chennai - 600 002.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.04.2016 made in M.C.O.P.No.132 of 2014 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.F.Terry Chella Raja

For R2 : Mr.R.Rathnathara  
for Mr.Srinivasan Ramalingam

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 04.04.2016 made in M.C.O.P.No.132 of 2014 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

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

3.The appellant is claimant in M.C.O.P.No.132 of 2014 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, 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 20.08.2013. 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 the 1<sup>st</sup> respondent and directed the 2<sup>nd</sup> respondent-Insurance Company to pay a sum of Rs.3,81,000/- 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 was carrying on business in the name and style "M/s.Sriram Printers" and partner in "M/s.Sriman consultants" and was earning a sum of Rs.3,45,000/- per annum. The Tribunal without considering the documents erroneously fixed meagre sum of Rs.3,00,000/- per annum. The Tribunal failed to consider the injuries sustained by the appellant. The appellant completely lost his loss of earning capacity due to the injuries. The amount awarded by the Tribunal towards disability is very meagre. Due to the injuries the appellant cannot do his work as he was doing earlier and he suffered 100% of disability. The Tribunal ought to have applied multiplier method and award compensation for disability. The Tribunal ought to have awarded compensation towards future medical expenses and awarded separately towards transportation, extra nourishment and damages etc. 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 2<sup>nd</sup> respondent Insurance Company contended that the appellant has not let in any evidence to prove that he has suffered functional disability and cannot do any work as he was doing earlier and he suffered 100% loss of earning capacity. In the absence of any material evidence, the Tribunal awarded compensation based on percentage method which is proper. The amount awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

6.Heard the learned counsel appearing for the appellant as well as 2<sup>nd</sup> -respondent Insurance Company and perused all the materials available on record.

7.From the materials available on record, it is seen that the appellant was carrying on business in the name and style "M/s.Sriram Printers" and partner in "M/s.Sriman consultants" and was earning a sum of Rs.3,45,000/- per annum. P.W.2-Doctor has certified that due to the injuries, the appellant suffered 45% disability. In the absence of any contra evidence let in by the respondent, the Tribunal accepted the disability certificate issued by P.W.2-Doctor and awarded compensation for 45%

disability at Rs.3,000/-. The contention of the learned counsel that appellant lost 100% loss of earning capacity and cannot do any work and lost entire earning power is not supported by any materials. The appellant failed to prove that he could not carry on the business as he was doing earlier and therefore the appellant is not entitled for compensation by applying multiplier method. The appellant was in hospital and he has taken treatment as in-patient for 41 days underwent surgery, skin grafting was done, K-wire was fixed and continued his treatment as out-patient. Due to the injuries and disability the appellant would not have worked atleast for six months. The Tribunal fixed Rs.25,000/- per month as income of the appellant. A sum of Rs.1,50,000/- is granted towards loss of income for 6 months (Rs.25,000 x 6 = Rs.1,50,000/-). The Tribunal has awarded a sum of Rs.10,000/- towards future medical expenses and Rs.20,000/- towards loss of amenities which are meagre and the same are enhanced to Rs.20,000/- towards future medical expenses and Rs.30,000/- towards loss of amenities. The amounts awarded by the Tribunal under other heads 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 |
|------|------------------------------------------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.   | Transportation, nourish food and Miscellaneous expenditure | 50,000                          | 50,000                            | Confirmed                              |
| 2.   | Medical expenses                                           | 21,000                          | 21,000                            | Confirmed                              |
| 3.   | Future medical expenses                                    | 10,000                          | 20,000                            | Enhanced                               |
| 4.   | Attender charges                                           | 20,000                          | 20,000                            | Confirmed                              |
| 5.   | Damages for pain, suffering and Trauma                     | 50,000                          | 50,000                            | Confirmed                              |
| 6.   | Disability                                                 | 1,35,000                        | 1,35,000                          | Confirmed                              |
| 7.   | Loss of income during treatment                            | 75,000                          | 1,50,000                          | Enhanced                               |

|    |                   |               |               |                         |
|----|-------------------|---------------|---------------|-------------------------|
| 8. | Loss of amenities | 20,000        | 30,000        | Enhanced                |
|    | Total             | Rs.3,81,000/- | Rs.4,76,000/- | Enhanced by Rs.95,000/- |

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,81,000/- is hereby enhanced to Rs.4,76,000/- 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 2<sup>nd</sup> 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(CS VI)

//True Copy//

Sub Assistant Registrar

To

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

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

+1cc to Mr.M.Malar, Advocate Sr.21189

C.M.A.No.430 of 2018

rv[co]  
srg 08/07/2019