

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2936 of 2019

A.Manavalan @ Thanappan

... Appellant/Petitioner

Vs

1.G.Sivaji

2.The Oriental Insurance Company Ltd.,

Motor III Party Claims Cell,

No.115, Prakasam Salai,

Chennai - 600 010.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.01.2019 made in M.C.O.P.No.2966 of 2015 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.M.Kavikannan  
for Mr.C.Thamilarasan  
For R2 : Mr.J.Chandran

### 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 22.01.2019 made in M.C.O.P.No.2966 of 2015 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

2.The brief facts is as follows:

On 12.11.2014 at 15.00 hours, while the petitioner was riding in a Two wheeler bearing Reg.No.TN-19-V-4696 from Thiruporur to Madhuranthagam, a Eicher van bearing Reg.No.TN-47-

AA-0759 came from opposite direction, in a rash and negligent manner endangering public safety with high speed and dashed on the two wheeler. As a result, the petitioner sustained grievous injuries all over the body. Thus the petitioner claimed a sum of Rs.4,00,000/- as compensation for the injuries sustained by him in the accident.

3.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 Eicher van and also awarded a sum of Rs.1,37,500/- as compensation under the following heads:

|                                        |               |
|----------------------------------------|---------------|
| Transportation and nourishing food     | Rs.10,000/-   |
| Attender charges                       | Rs.2,500/-    |
| Medical expenses                       | Rs.5,000/-    |
| Disability                             | Rs.30,000/-   |
| Loss of earning                        | Rs.30,000/-   |
| Damages for pain, suffering and trauma | Rs.40,000/-   |
| Loss of amenities                      | Rs.20,000/-   |
| Total                                  | Rs.1,37,500/- |

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

4.In the grounds of appeal, the appellant has contended that the Tribunal has not properly assessed the nature of injuries and period of treatment taken by the appellant. It is further contended that the Tribunal has awarded only a meagre sum of Rs.30,000/- towards permanent disability against the claim of Rs.2,00,000/- made by the appellant. The sum 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 has contended that the Tribunal has held that percentage of disability certified by P.W.4-Doctor is excessive and the Tribunal reduced the same to 10% and there is no error in reducing the percentage of disability. The Tribunal after considering both oral and documentary evidence in proper

perspective, has awarded compensation which is not excessive. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

6. Heard Mr.M.Kavikannan for Mr.C.Thamilarasan, learned counsel appearing for the appellant and Mr.J.Chandran, learned counsel appearing for the 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 a driver and was earning a sum of Rs.15,000/-. The appellant was aged about 28 years. Due to the accident, the appellant sustained laceration injuries of pelvic region with extra vacation of urine, loss of teeth upper lateral incisor, upper canine, sub conjunctival hemorrhage on right eye. The appellant has taken treatment in the Hospital as in-patient from 12.11.2014 to 15.11.2014. PW4/Doctor assessed the disability of the appellant at 16% but the Tribunal reduced the same to 10% by awarding Rs.3,000/- per percentage which is in proper (Rs.3,000/- x 10% = Rs.30,000/-). But the sum awarded by the Tribunal towards attender charges is meagre and hence this Court enhances the same to Rs.5,000/-. It is seen that the Tribunal has not awarded any sum towards loss of income, hence by considering the avocation of the appellant, this Court awards a sum of Rs.10,000/- towards loss of income. Since the sum awarded by the Tribunal under other heads are properly considered, the same does not require any modification. 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.   | Transportation and nourishing food | Rs.10,000/-                     | Rs.10,000/-                       |
| 2.   | Attender charges                   | Rs.2,500/-                      | Rs.5,000/-                        |
| 3.   | Medical expenses                   | Rs.5,000/-                      | Rs.5,000/-                        |
| 4.   | Disability                         | Rs.30,000/-                     | Rs.30,000/-                       |
| 5.   | Loss of earning                    | Rs.30,000/-                     | Rs.30,000/-                       |

|    |                                        |               |               |
|----|----------------------------------------|---------------|---------------|
| 6. | Damages for pain, suffering and trauma | Rs.40,000/-   | Rs.40,000/-   |
| 7. | Loss of amenities                      | Rs.20,000/-   | Rs.20,000/-   |
| 8. | Loss of income                         | -             | Rs.10,000/-   |
|    | Total                                  | Rs.1,37,500/- | Rs.1,50,000/- |

8.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,37,500/- is hereby enhanced to Rs.1,50,000/- 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 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.

-s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

mtl  
To

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

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

+1 cc to Mr.C.Thamilarasan Advocate sr67159  
+1 cc to Mr.J.Chandran Advocate sr67672

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