

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1532 of 2017

T.Ramamoorthy

...Appellant/Petitioner

Vs

1. D.Ashok Kumar

2. The Divisional Manager

United Insurance Company Limited,

TKM Complex, Katpadi Road,

Vellore Town.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree dated 30.01.2015 made in M.C.O.P.No.102 of 2013 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Vellore.

For Appellant : Mr.R.Nalliyappan

For R2 : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal is filed seeking enhancement of compensation granted by the Tribunal in the award dated 30.01.2015 made in M.C.O.P.No.102 of 2013 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Vellore.

2.The appellant is claimant in M.C.O.P.No.102 of 2013 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Vellore. He filed the above claim petition claiming a sum of Rs.12,00,000/- as compensation for the injuries sustained by him in the accident that took place on 18.11.2012. The Tribunal considering the pleadings, oral and documentary

evidence, held that the accident occurred only due to rash and negligent riding by the rider of the two wheeler belonging to the 1st respondent and directed both the 1st respondent as well as 2nd respondent-Insurance Company being insurer of the 1st respondent's vehicle to pay a sum of Rs.2,11,791/- as compensation to the appellant, jointly and severally. Not being satisfied with the amount awarded by the Tribunal, the appellant/claimant has come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellant/claimant contended that the appellant has sustained left proximal tibia and metacarpal fractures and P.W.2/Doctor has assessed the disability of the appellant at 45%. The Tribunal ought to have adopted multiplier method while awarding compensation towards disability. The amounts awarded by the Tribunal under the heads of loss of income, transportation, extra nourishment and pain & suffering are meagre. The Tribunal has not awarded any amount towards future loss of income, loss of amenities and future medical expenses and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not suffered any functional disability. The Tribunal has considered all the aspects in proper perspective and awarded compensation by adopting percentage basis. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as learned counsel appearing for the 2nd respondent and perused the materials available on record.

6.From the materials available on record, it is seen that P.W.2/Doctor in his evidence has deposed that metacarpal bones and proximal tibia bone are mal-united, the appellant could not do the work as he was doing earlier and certified the disability of the appellant at 45%. The Tribunal considering the evidence of P.W.2/Doctor held that the fractures are mal-united and hence, not adopted multiplier method and awarded a sum of Rs.90,000/- (Rs.2,000/- X 45%) towards disability by awarding a sum of Rs.2,000/- per percentage of disability, which is proper. According to the appellant, he was earning a sum of Rs.10,000/- per month by working as a Security Guard. He was treated in the hospital as in-patient from 20.11.2012 to 01.12.2012 and underwent surgery. The appellant would have lost income atleast

for six months. A sum of Rs.15,000/- awarded by the Tribunal is hereby enhanced to Rs.30,000/- (Rs.5,000/- X 6). A sum of Rs.3,000/- each awarded by the Tribunal towards extra nourishment and attendant charges are meagre and hence, they are hereby enhanced to a sum of Rs.10,000/- each. The amounts awarded by the Tribunal under all the 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.	Disability	90,000	90,000	Confirmed
2.	Pain and suffering	35,000	35,000	Confirmed
3.	Extra Nourishment	3,000	10,000	Enhanced
4.	Medical bills	59,791	59,791	Confirmed
5.	Loss of income (during the period of treatment)	15,000	30,000	Enhanced
6.	Attendant Charges	3,000	10,000	Enhanced
7.	Damage to clothes	1,000	1,000	Confirmed
8.	Transportation	5,000	5,000	Confirmed
	Total	2,11,791	2,40,791	Enhanced by Rs.29,000/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,11,791/- is hereby enhanced to Rs.2,40,791/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. Both the 1st respondent as well as 2nd respondent/Insurance Company are directed to deposit the enhanced award amount now determined by this Court along with interest and costs, jointly and severally, 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 V)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate
(The Motor Accidents Claims Tribunal)
Vellore.

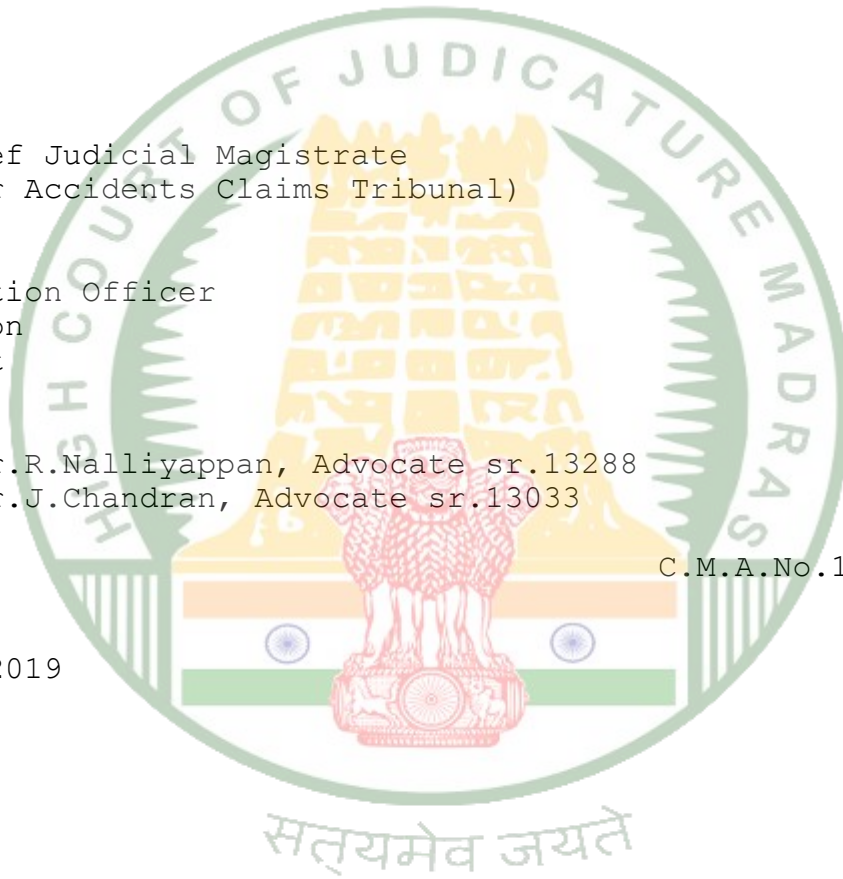
2.The Section Officer
V.R.Section
High Court
Chennai.

+1cc to Mr.R.Nalliyappan, Advocate sr.13288

+1cc to Mr.J.Chandran, Advocate sr.13033

C.M.A.No.1532 of 2017

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