

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.546 of 2017

B.Sudarsan

.. Appellant/Petitioner

Vs.

1. P.Sunderrajan

2. The New India Assurance Co. Ltd.,
T.P.Cell, Justice Bhasheer Ahamed Building,
Vth Floor, 45, Moore Street,
Chennai - 600 001.

Now Office changed at
The New India Assurance Co.Ltd.,
Third Party Claim Office,
No.45, Moore street, 5th Floor,
Chennai - 600 001. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.02.2014 made in M.C.O.P.No.5003 of 2003, on the file of the Motor Accident Claims Tribunal/Special Sub Judge No.1, at Chennai.

For Appellant : Mr.J.Ramkumar
For R1 : Mr.P.G.Perumal Pandian
For R2 : Mr.D.Nadhamuni

J U D G M E N T

Being dissatisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present Civil Miscellaneous Appeal, seeking enhancement of the same.

2. The case in brief is as follows:

On the fateful day, ie. on 11.06.2003, at about 18.30 hours, the appellant/claimant was walking near the junction of Govindan Road and Thalayari Street. At that time, a Maruthi 800 Car bearing Registration No.TN 09 S 5586, belonging to the first respondent and insured with the second respondent, came in a rash and negligent manner and hit the claimant from behind. Due to the said impact, the appellant sustained grievous injuries

all over the body. Stating so, he filed a claim petition claiming compensation of Rs.1,30,000/-. The Tribunal, after considering the oral and documentary evidence available on record, awarded a compensation of Rs.60,000/- with interest at 7.5% per annum from the date of petition. Feeling aggrieved over the same, the appellant is before this Court with the present appeal, seeking enhancement of the compensation awarded by the Tribunal.

3. The learned counsel for the appellant/claimant submitted that the Tribunal has awarded a lesser sum of Rs.22,500/- towards 30% permanent disability, which has to be enhanced. The learned counsel further submitted that the compensation awarded under other heads are also very meagre and hence, the same warrant interference by way of enhancement.

4. Per contra, the learned counsel for the first respondent and the learned counsel for the second respondent submitted that after properly analysing the materials and evidence, the Tribunal has awarded the compensation, which is just and reasonable and hence, the same does not require any interference in the hands of this Court.

5. Heard the learned counsel on either side and perused the materials available on record.

6. This is the claimant's appeal seeking enhancement of the compensation awarded by the Tribunal and hence, there is no requirement for this Court to go into the question on negligence and the liability of the second respondent insurance company to pay compensation.

7. The appellant/claimant himself examined as P.W.1, who deposed in his evidence that at the time of accident, he was 11 years old boy; he had sustained Epiphyseal injury in right ankle and laceration over the lateral aspect of the left ankle and multiple injuries in all over the body; and he initially took treatment at Annamalai Hospital and thereafter, at Orthopaedic & Specialities Hospital. To substantiate the nature of the injuries sustained by the appellant, P.W.2/doctor was examined, who assessed his disability at 30%. Ex.P5 is the disability certificate; and Ex.P6 is the X-ray. However, the Tribunal has taken the disability of the claimant only at 15%, which seems to be unfair and unjust, warranting interference. Hence, this Court is inclined to take the entire percentage of disability at 30% as assessed by P.W.2/doctor and award the compensation under the head "permanent disability" by granting Rs.1,500/- per percentage of disability. Accordingly, the award of Rs.22,500/- is hereby enhanced to Rs.45,000/- ($\text{Rs.1,500/-} \times 30\%$) under this head.

8. That apart, the Tribunal has awarded Rs.1,000/- towards transportation charges, Rs.2,000/- towards extra nourishment and Rs.14,500/- towards pain and suffering, which, in the opinion of this Court, appear to be on the lower side and hence, the same are hereby enhanced to Rs.2,000/-, Rs.5,000/- and Rs.25,000/- respectively, having regard to the nature of injuries, the percentage of disability sustained and the period of treatment undertaken by the appellant/ claimant.

9. However, there is no modification with regard to the award of Rs.20,000/- towards medical expenses, as per Ex.P3-medical bills, which is the actual medical expenses incurred by the appellant/claimant. Similarly, the rate of interest at 7.5%pa awarded by the Tribunal needs no interference by this Court. Thus, the award of the Tribunal is enhanced from Rs.60,000/- to Rs.97,000/-, the details of which are as follows:

Head	Compensation awarded by the Tribunal (Rs.)	Compensation enhanced by this Court (Rs.)
Permanent disability at 30%	22,500/-	45,000/-
Medical expenses	20,000/-	20,000/-
Extra nourishment	2000/-	5,000/-
Pain and suffering	14,500/-	25,000/-
Transportation	1000/-	2,000/-
Total	60,000/-	97,000/-

10. In fine, this appeal is partly allowed. No costs. The second respondent/Insurance Company is directed to deposit the entire compensation amount as awarded by this Court, with interest and costs, after deducting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the same to the savings bank account of the appellant/claimant, through RTGS within a period of one week thereafter.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

av

To

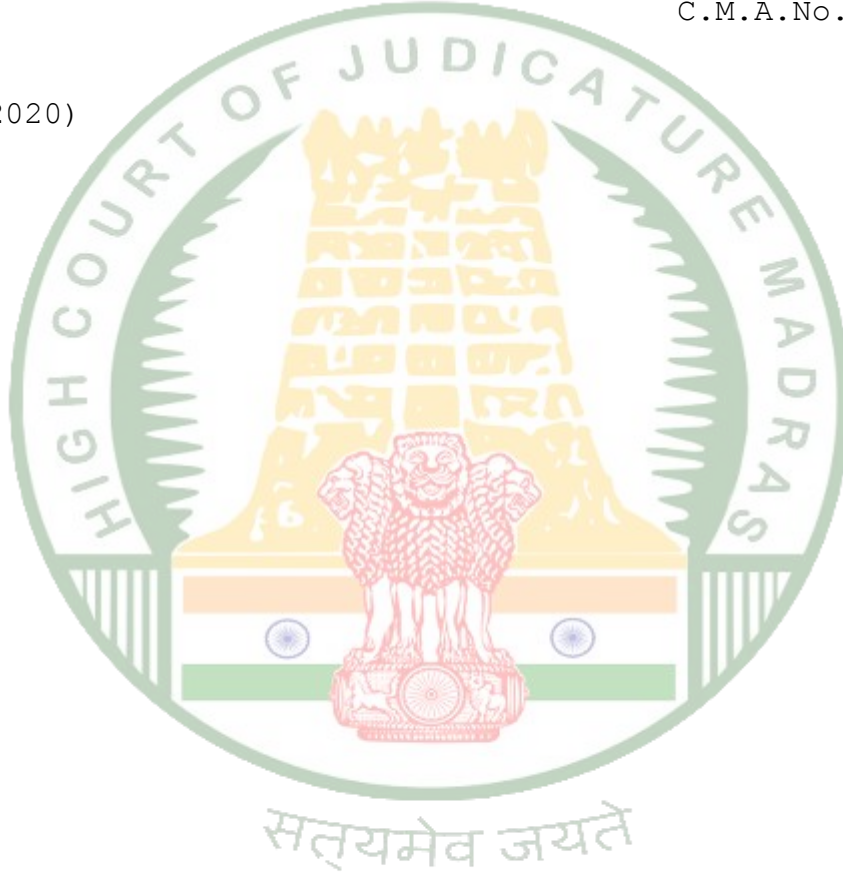
1.The Special Sub Judge No.1,
The Motor Accidents Claims Tribunal,
Chennai.

2.The Section Officer,
VR Section,
High Court, Madras.

+lcc to Mr.J.Ramkumar, Advocate, S.R.No. 80678

C.M.A.No.546 of 2017

EV(CO)
GN(22/06/2020)



WEB COPY