

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2555 of 2018

Nishanth Raj

.. Appellant /Claimant

Vs.

1.K.Meiyalagan

2.Reliance General Insurance Co. Ltd.,  
6<sup>th</sup> Floor, 6, Haddows Road,  
Nungambakkam,  
Chennai-600 034.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.06.2018 made in M.C.O.P.No.2250 of 2014 on the file of Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai.

For Appellant : Ms.Ramya.V.Rao

For R2 : Mr.S.Arun Kumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 28.06.2018 made in M.C.O.P.No.2250 of 2014 on the file of Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.2250 of 2014 on the file of Motor Accidents Claims Tribunal, III Judge, Small Causes Court, Chennai. He filed the said 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 08.02.2013. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the car belonging to the 1<sup>st</sup>

respondent and directed both 1<sup>st</sup> respondent as well as 2<sup>nd</sup> respondent-Insurance Company being insurer of the said car to pay a sum of Rs.3,63,300/- 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.

3.The learned counsel appearing for the appellant contended that the appellant was 3<sup>rd</sup> year Visual Basic Communication student and he has to stand for a long time due to the nature of work. In view of the injuries sustained by him in the accident, the Tribunal having held that the appellant would have suffered some functional disability, ought to have awarded compensation by adopting multiplier method. Due to the injuries, his education was affected. The amounts awarded by the Tribunal under different heads are very meagre and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company contended that the appellant has not proved that his education affected or he suffered any functional disability and loss of earning capacity. In the absence of any material, the Tribunal has awarded excessive amount of Rs.1,00,000/- towards pain and suffering. The Tribunal considering the entire materials available on record and nature of injuries, reduced the percentage of disability from 40% to 30% by giving valid reason and granted just compensation. In view of the same, the appellant is not entitled for any compensation and prayed for setting aside the award of the Tribunal.

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

6.From the materials available on record, it is seen that due to the injuries suffered by the appellant, he was hospitalized for three different periods and took treatment as in-patient from 08.02.2013 to 18.02.2013, 20.03.2013 to 25.03.2013 and 03.11.2015 to 05.11.2015, surgery was done and plates were implanted. The appellant examined P.W.2-Doctor, who certified the disability of the appellant at 40%. But the Tribunal reduced the percentage of disability to 30% on the ground that P.W.2-Doctor has not given any worksheet. The 2<sup>nd</sup> respondent has not produced any evidence to show that percentage of disability certified by P.W.2-Doctor is on the higher side. In such circumstances, the appellant is entitled to compensation for 40% disability at the rate of Rs.3,000/- per percentage of disability and a sum of Rs.1,20,000/- ( $\text{Rs.3,000/-} \times 40\% = \text{Rs.1,20,000/-}$ ) is granted under the head of disability. The

Tribunal has awarded excessive sum of Rs.1,00,000/- towards pain and suffering. In view of the same, the appellant is not entitled for any enhancement under other heads. The amounts awarded by the Tribunal under other heads are just and reasonable and the same 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 (40%)        | 90,000                          | 1,20,000                          | Enhanced                               |
| 2.   | Pain and suffering      | 1,00,000                        | 1,00,000                          | Confirmed                              |
| 3.   | Extra Nourishment       | 25,000                          | 25,000                            | Confirmed                              |
| 4.   | Transportation          | 20,000                          | 20,000                            | Confirmed                              |
| 5.   | Damages to Cloth        | 1,000                           | 1,000                             | Confirmed                              |
| 6.   | Attendant Charges       | 4,000                           | 4,000                             | Confirmed                              |
| 7.   | Medical Expenses        | 98,263                          | 98,263                            | Confirmed                              |
| 8.   | Future Medical Expenses | 15,000                          | 15,000                            | Confirmed                              |
| 9.   | Loss of Income          | 5,000                           | 5,000                             | Confirmed                              |
| 10.  | Loss of Amenities       | 5,000                           | 5,000                             | Confirmed                              |
|      | Total                   | 3,63,263                        | 3,93,263                          | Enhanced by Rs.30,000/-                |

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,63,263/- is hereby enhanced to Rs.3,93,263/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. Both the respondents are 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-IV)

//True Copy//

Sub Assistant Registrar

kj/rst

To

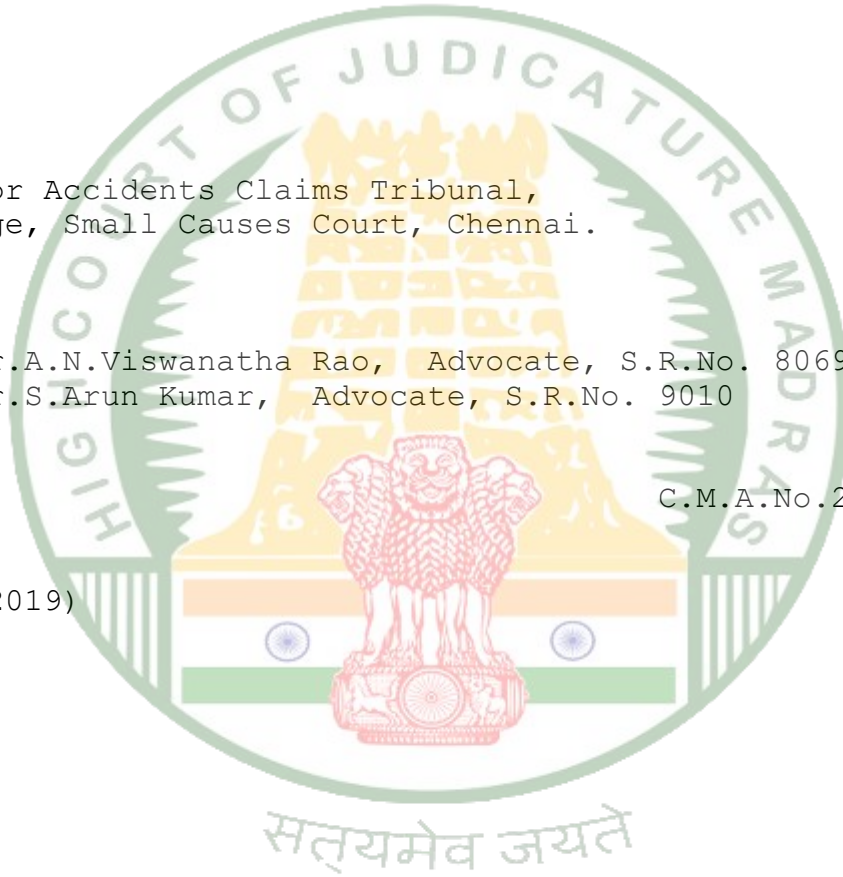
1.The Motor Accidents Claims Tribunal,  
III Judge, Small Causes Court, Chennai.

+2cc to Mr.A.N.Viswanatha Rao, Advocate, S.R.No. 8069

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No. 9010

C.M.A.No.2555 of 2018

VBA (CO)  
GN (23/05/2019)



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