

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 177 of 2020

G. Balan

... Appellant/Petitioner

Vs.

1.YBM Construction,
No. 115/6, Shanthavelllore,
Sankavachatram,
Sriperumbudur,
Kancheepuram 631 501.

(R1 was set exparte before the Tribunal)

2.The New India Assurance Co. Ltd.,
Motor Claims, No. 45, Moore Street,
Chennai 600 001. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 17.06.2019, made in M.C.O.P. No. 2075 of 2014, on the file of the Special Sub Court No.1, Small Causes Court (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. P. Nagaraj

For Respondents: Mr. J. Chandran (for R2)

J U D G M E N T

This appeal has been filed seeking enhancement of the compensation granted by the award dated 17.06.2019, made in M.C.O.P. No. 2075 of 2014, on the file of the Special Sub Court No.1, Small Causes Court (Motor Accident Claims Tribunal), Chennai.

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

3.The appellant is the claimant in M.C.O.P. No. 2075 of 2014, on the file of the Special Sub Court No.1, Small Causes

Court (Motor Accident Claims Tribunal), Chennai. He filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.07.2014.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that there is no composite negligence on the part of both the vehicles and directed the 2nd respondent, as insurer of the vehicle to pay a sum of Rs.2,28,800/- as compensation to the appellant.

5.Not being satisfied with the amounts awarded by the Tribunal in the award dated 17.06.2019, made in M.C.O.P. No. 2075 of 2014, the appellant has come out with the present appeal.

6.Learned counsel appearing for the appellant contended that at the time of accident, the appellant was doing Textile Business in the name and style of Bhuvaneswari Textiles and was earning a sum of Rs.20,000/- per month. In the accident, the appellant suffered comminuted fracture of acetabulum, posterior pubic ramus fracture, central dislocation of head of left femur and multiple injuries all over the body. He has taken treatment as in-patient in SRM Hospital from 08.07.2014 to 17.07.2014 and again took treatment as in-patient in Ganga Hospital from 19.07.2014 to 23.07.2014. P.W.3- Doctor assessed the percentage of disability suffered by the appellant as 40%. The Tribunal has awarded a meagre amount towards permanent disability by reducing the percentage of disability to 20%. Due to the accident, the appellant has lost his earning capacity. The Tribunal ought to have awarded compensation towards loss of earning capacity, mental agony, future medical expenses and loss of pleasures of life. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

7.Per contra, learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal, considering the nature of injuries sustained by the appellant and disability suffered by the appellant, has awarded compensation towards loss of earnings and disability separately, apart from awarding compensation under other heads such as pain and suffering, medical expenses, loss of future prospects, transportation charges and extra nourishment, which are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

9. It is the contention of the appellant that in the accident, he suffered fracture and multiple injuries all over the body. He has taken treatment as in-patient in SRM Hospital from 08.07.2014 to 17.07.2014 and again took treatment as in-patient in Ganga Hospital from 19.07.2014 to 23.07.2014. P.W.3- Doctor assessed the percentage of disability suffered by the appellant as 40%. The Tribunal reduced the percentage of disability assessed by P.W.3- Doctor on the ground that P.W.3 - Doctor is not the Doctor who treated the appellant and P.W.3 - Doctor has assessed the disability of the appellant only after four years of accident and the said Doctor has not filed any calculation details for the assessment of disability. The reason given by the Tribunal for reducing the percentage of disability from 40% to 20% is not correct. The appellant is entitled to compensation for 40% disability. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.1,20,000/- [Rs.3,000/- x 40%]. The Tribunal has awarded a meagre sum of Rs.3,750/- towards attendant charges. Considering the period of treatment taken and the nature of injuries, the compensation awarded towards attendant charges is enhanced to Rs.20,000/-. The appellant has claimed that he was a Proprietor of Bhuvaneswari Textiles and was earning a sum of Rs.20,000/- per month. The appellant failed to substantiate the said contention. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.8,000/- per month as notional income and granted a sum of Rs.24,000/- towards loss of income for a period of three months. The accident is of the year 2014. The monthly income fixed by the Tribunal is meagre. A sum of Rs.12,000/- per month is fixed as notional income of the appellant. Due to the injuries, disability suffered and the treatment taken, the appellant could not have worked atleast for a period of six months. Hence, the amounts awarded by the Tribunal towards loss of income is enhanced to Rs.72,000/- [Rs.12,000/- x 6 months]. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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	60,000/-	1,20,000/-	Enhanced
2.	Pain and sufferings	20,000/-	20,000/-	Confirmed
3.	Transportation	21,040/-	21,040/-	Confirmed
4.	Extra nourishment	10,000/-	10,000/-	Confirmed

5.	Medical expenses	69,963/-	69,963/-	Confirmed
6.	Attendant charges	3,750/-	20,000/-	Enhanced
7.	Loss of future prospects	20,000/-	20,000/-	Confirmed
8.	Loss of income	24,000/-	72,000/-	Enhanced
	Total	2,28,753/- rounded off to 2,28,800/-	3,53,003/- rounded off to 3,53,000/-	Enhanced by Rs.1,24,200/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.2,28,800/- is enhanced to Rs.3,53,000/- along with interest and costs. The 2nd respondent is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No. 2075 of 2014. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.1,24,000/-. No costs.

Sd/-
Assistant Registrar (CS VIII)

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सत्यमेव जयते
Sub Assistant Registrar

To

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The Special Subordinate Judge No.1,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

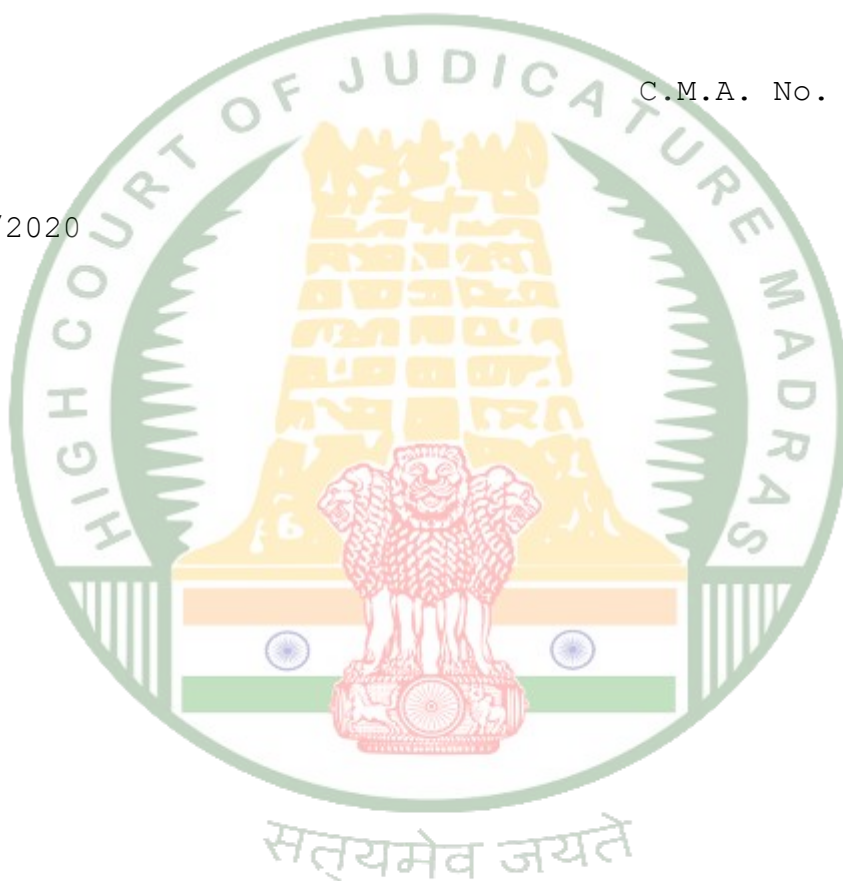
Copy to

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

+lcc to Mr.J.Chandran, Advocate Sr.7773
+lcc to Mr.P.Nagaraj, Advocate Sr.7502

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srg 30/11/2020



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