

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.16 of 2020

D.Hanifkhan

.. Appellant/Claimant

Vs.

1.A.Anthony Raj

2.United India Insurance Co. Ltd.,
Motor Third Party Hub, Silingi Building,
4th Floor, No.134, Greems Road,
Chennai - 600 006.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.10.2019 made in M.C.O.P.No.2521 of 2016 on the file of Motor Accident Claims Tribunal, Small Causes Court, IInd Special Sub Court, Chennai.

For Appellant : Mr.R.Nalliyappan
For R2 : Mr.C.Paranthaman

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 25.10.2019 made in M.C.O.P.No.2521 of 2016 on the file of Motor Accident Claims Tribunal, Small Causes Court, IInd Special Sub Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.2521 of 2016 on the file of Motor Accident Claims Tribunal, Small Causes Court, IInd Special Sub Court, Chennai. He filed the said claim petition claiming a sum of Rs.16,00,000/- as compensation for the injuries sustained by him in the accident that took place on 13.03.2016.

3.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 van belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said van to pay a sum of Rs.1,69,900/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellant/claimant contended that in the accident the appellant sustained fracture of both knees. The Medical Board assessed the functional disability of the appellant as 15% but the Tribunal reduced the disability to 10% without any reason. The Tribunal ought to have adopted multiplier method for awarding compensation towards disability. Further the appellant was working as Business Presentation Specialist in MCKENSEY & Company, Chennai and was earning a sum of Rs.28,000/- per month. The appellant has taken treatment as inpatient in a private hospital from 13.03.2016 to 31.03.2016, for more than 19 days. The appellant could not do the work as he was doing earlier. He is walking only with the help of walking stick. The amount awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not proved that he suffered functional disability. In view of the same, the Tribunal has awarded compensation towards disability by applying percentage method. The Tribunal after considering all the materials available on record in proper perspective, has awarded compensation, which is not meagre. The appellant has not made out any case for enhancement and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

8. It is the contention of the appellant that he sustained disability in both lower limbs due to post traumatic sequelae. Due to degloving injuries, both knee joints underwent wound debridement with skin grafting. The appellant was examined by the Medical Board and the Medical Board certified the disability of the appellant as 15%. Without assigning any reason, the Tribunal reduced the disability to 10% and awarded a sum of Rs.30,000/- (Rs.3,000/- x 10%) towards disability at the rate of Rs.3,000/- per percentage of disability. The accident is of the year 2016 and the amount awarded by the Tribunal towards disability is meagre. The appellant has not proved that he suffered functional disability. Hence, he is not entitled to compensation by adopting multiplier method. Therefore, the appellant is entitled to compensation for 15% towards disability

at the rate of Rs.4,000/- per percentage. A sum of Rs.60,000/- (15% x Rs.4,000/-) is awarded towards disability. According to the appellant, he was earning a sum of Rs.28,000/- per month by working as Business Presentation Specialist in MCKENSEY & Company, Chennai. The appellant failed to prove the said contention. In the absence of any material evidence, with regard to avocation and income of the appellant, the Tribunal fixed a sum of Rs.13,000/- as monthly income of the appellant and awarded a sum of Rs.39,000/- towards loss of income for a period of three months. The same is not meagre. Considering the nature of injuries sustained by the appellant, he would not have attended his work atleast for a period of six months. Therefore a sum of Rs.78,000/- (Rs.13,000/- X 6) is granted towards loss of income for six months.

9. From the materials on record, it is seen that the appellant has taken treatment as in-patient in a private hospital from 13.03.2016 to 31.03.2016. The amounts awarded by the Tribunal towards pain & sufferings, extra nourishment, damages to clothes and attendant charges are meagre. Considering the nature of injuries and period of treatment taken by the appellant, amounts awarded towards pain & sufferings, extra nourishment, damages to cloth and attendant charges are enhanced to Rs.25,000/-, Rs.25,000/-, Rs.3,000/- and Rs.20,000 respectively. It is the contention of the appellant that due to the injuries, he could not do the work as he was doing earlier. He is walking only with the help of walking stick. A sum of Rs.10,000/- awarded by the Tribunal towards loss of amenities is meagre and the same is hereby by enhanced to Rs.50,000/-. The amounts awarded by the Tribunal under other heads are just and reasonable and hence 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 or reduced
1.	Permanent disability	30,000	60,000	Enhanced
2.	Pain and suffering	10,000	25,000	Enhanced
3.	Transportation charges	10,000	10,000	Confirmed
4.	Extra nourishment	10,000	25,000	Enhanced
5.	Damages to clothes	1,000	3,000	Enhanced

6.	Attendant charges	10,000	20,000	Enhanced
7.	Loss of amenities	10,000	50,000	Enhanced
8.	Mental agony	5,000	5,000	Confirmed
9.	Loss of income	39,000	78,000	Enhanced
10.	Medical expenses	44,878	44,878	Confirmed
	Total	Rs.1,69,878/- is rounded off to Rs.1,69,900/-	Rs.3,20,878/- is rounded off to Rs.3,20,900/-	Enhanced by Rs.1,51,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,69,900/- is hereby enhanced by Rs.3,20,900/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd 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. No costs.

s/d-
Assistant Registrar

True Copy

सत्यमेव जयते
Sub-Assistant Registrar

mtl

To

1. The II Special Subordinate Judge,
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

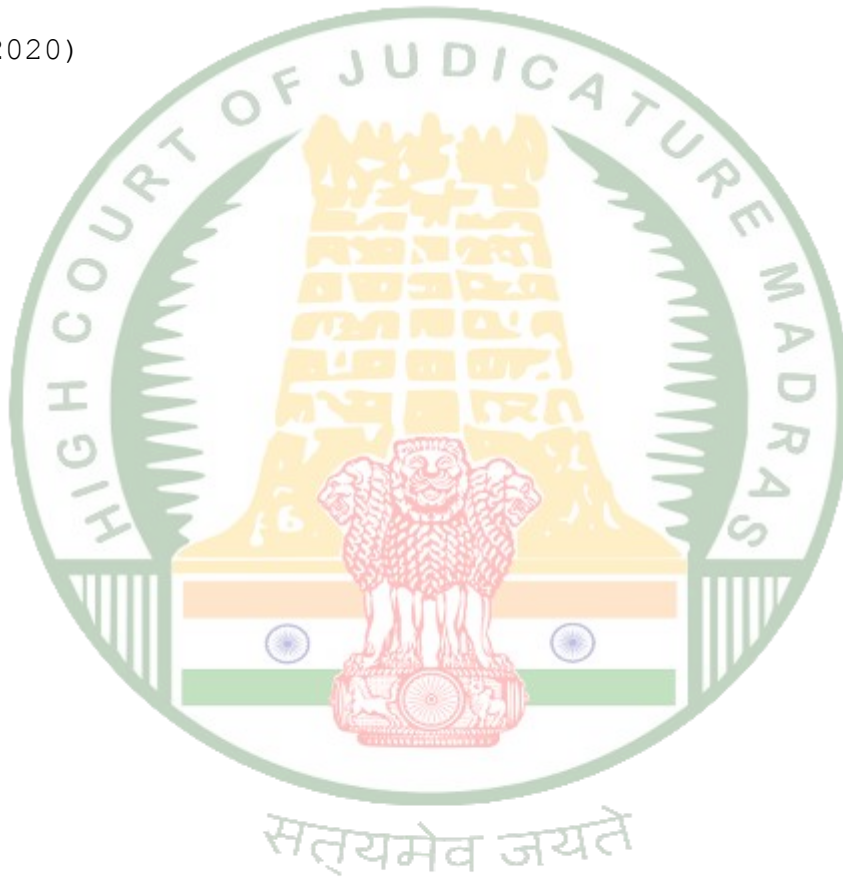
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2.The Section Officer
V.R.Section
High Court, Chennai.

+1 CC to Mr.R.Nalliyappan, Advocate sr 4661.
+1 CC to Mr.C.Paranthaman, Advocate sr 4523.

C.M.A.No.16 of 2020

SV (CO)
SP (23/11/2020)



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