

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2315 of 2009

P.Jothi

.. Appellant/Claimant

Vs.

1.K.Natarajan

2.The Branch Manager,
National Insurance Company Limited,
165, Nethaji Road, Manjakuppam,
Cuddalore - 1.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.04.2009 made in M.C.O.P.No.555 of 2002 on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Cuddalore.

For Appellant : Mr.S.Kalyanaraman

For R2 : Mrs.R.Sreevidhya

R1 : Not ready in Notice

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 13.04.2009 made in M.C.O.P.No.555 of 2002 on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Cuddalore.

2.The appellant is the claimant in M.C.O.P.No.555 of 2002 on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Cuddalore. He filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.01.2002.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to

rash and negligent riding by the rider of the motorcycle belonging to the first respondent and directed the respondents 1 and 2, being the owner and insurer of the motorcycle to jointly or severally pay a sum of Rs.1,32,640/- 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 contended that the appellant suffered fracture in left leg and left arm. Due to the fracture and injuries, he is limping and could not do the work as he was doing earlier. The appellant examined P.W.3/Doctor to prove the nature of injuries and disability suffered by him. PW3/Doctor certified that the appellant suffered 40% disability for fracture in the left leg and 40% disability for left arm. The Tribunal ought to have adopted multiplier method for granting compensation for loss of earning power. P.W.3/Doctor has examined the appellant and assessed that appellant suffered 80% disability but the Tribunal has granted compensation only for 40% of disability. The Tribunal failed to consider the oral and documentary evidence and awarded meagre amounts as compensation and prayed for enhancement of compensation.

6. Per contra, Mrs.R.Sreevidhya, learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant has not proved that he suffered functional disability and lost his earning capacity. Therefore, he is not entitled to compensation towards loss of earning capacity by adopting multiplier method. P.W.2, employer of the appellant produced Ex.P10/salary certificate for the month of June 2002. The Tribunal has granted compensation by adopting percentage method at the rate of Rs.1,000/- per percentage of disability but wrongly mentioned as compensation only for 40% of disability. The amounts awarded by the Tribunal under different heads are not meagre 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 the entire materials on record.

8. From the materials available on record, it is seen that it is the contention of the appellant that he suffered fracture on his left leg and left arm. The appellant examined P.W.3/Doctor and proved the nature of injuries and disability suffered by him. P.W.3/Doctor has examined the appellant and assessed the disability for the left leg and left arm at 40% each. The Tribunal considering the contention of the appellant

with regard to injuries, disability and evidence of P.W.3/Doctor, granted compensation by adopting percentage method. The contention of the learned counsel appearing for the appellant that appellant lost his earning power and Tribunal ought to have granted compensation by adopting multiplier method is without merits. P.W.2, the employer of the appellant deposed before the Tribunal and produced Ex.P10/salary certificate. The salary certificate is dated 15.06.2002 and the accident has occurred on 10.01.2002. The appellant was paid salary on 15.06.2002 which shows that appellant continues his work under P.W.2. The appellant has not produced any material to show that even after the accident, after working under P.W.2, his income has been reduced. Ex.P10 produced by P.W.2 shows that he was working under P.W.2 from the month of May 2002. Hence, the appellant is not entitled to compensation by adopting multiplier method.

9.As far as the contention of the learned counsel appearing for the appellant that P.W.3/Doctor certified that appellant suffered 40% disability for left leg and 40% disability for left arm and totally 80% and the Tribunal has granted compensation only for 40% disability is also without merits. The accident occurred in the year 2002 and during that year, only a sum of Rs.1,000/- per percentage of disability was granted. When the Tribunal has granted a sum of Rs.80,000/- towards disability, it is only for 80% of disability. Considering the nature of avocation that the appellant is a coolie and the evidence of appellant as P.W.1 and the evidence of P.W.2, it will be just and equitable if the appellant is awarded a sum of Rs.1,250/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,00,000/- (Rs.1,250/- X 80% of disability). From Ex.P10/salary certificate dated 15.06.2002, it is seen that appellant was working from May 2002. The Tribunal has awarded compensation for loss of income for three months. The Tribunal has fixed a sum of Rs.3,000/- per month as notional income of the appellant and awarded compensation towards loss of income for three months. The accident occurred on 10.01.2002 and the monthly income fixed by the Tribunal is proper. The appellant produced salary certificate dated 15.06.2002. Hence, due to the injuries suffered in the accident, the appellant could not have worked atleast for a period of four months. Thus, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.12,000/- (Rs.3,000/- X 4 months). The appellant has taken treatment as in-patient in two different hospitals, viz., at Government Hospital, Cuddalore from 10.01.2002 to 11.01.2002 and at Krishna Hospital, Cuddalore from 11.01.2002 to 19.01.2002. Considering the nature of injuries and period of treatment taken by the appellant, the amount awarded by the Tribunal towards attendant charges at Rs.5,000/- is meagre and the same is

enhanced to Rs.7,500/-. The Tribunal has not awarded any amount towards loss of amenities and damages to clothes. The appellant is entitled to a sum of Rs.10,000/- towards loss of amenities and Rs.500/- towards damages to clothes. The amounts awarded by the Tribunal towards pain and sufferings, extra nourishment, transportation and medical expenses 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
1.	Disability	80,000/-	1,00,000/-	Enhanced
2.	Pain and sufferings	15,000/-	15,000/-	Confirmed
3.	Loss of income	9,000/-	12,000/-	Enhanced
4.	Extra nourishment	5,000/-	5,000/-	Confirmed
5.	Transportation	5,000/-	5,000/-	Confirmed
6.	Medical expenses	13,640/-	13,640/-	Confirmed
7.	Attendant charges	5,000/-	7,500/-	Enhanced
8.	Loss of amenities	-	10,000/-	Granted
9.	Damages to clothes	-	500/-	Granted
	Total	Rs.1,32,640/-	Rs.1,68,640/-	enhanced by Rs.36,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,32,640/- is hereby enhanced to Rs.1,68,640/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation. The respondents are jointly or severally 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, to the credit of M.C.O.P.No.555 of 2002 on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Cuddalore. On such deposit,

the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

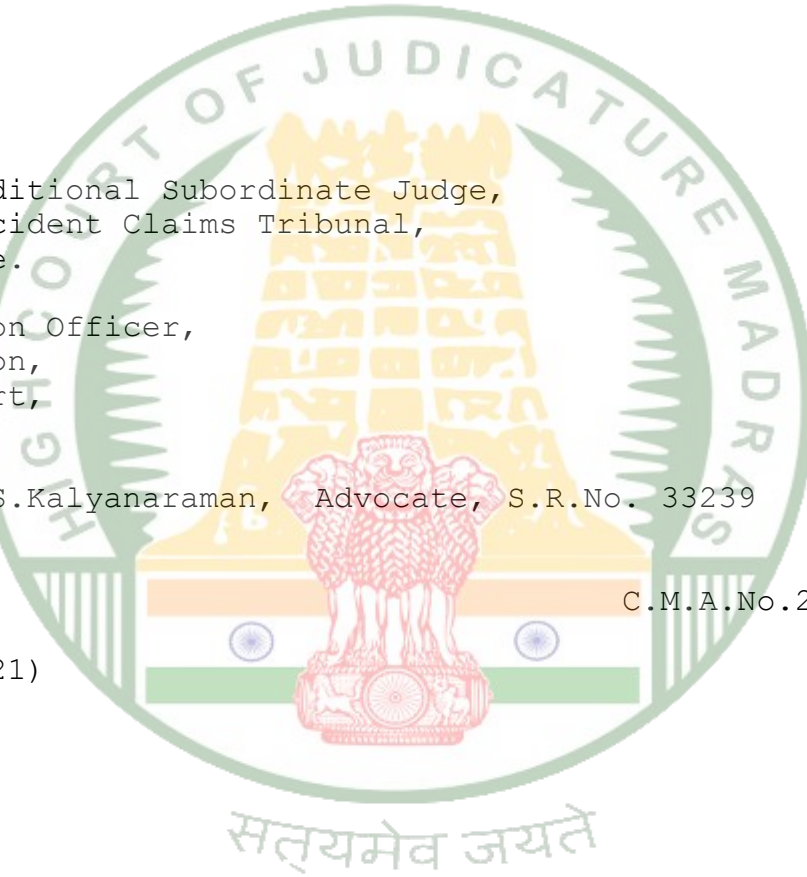
1.The II Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Cuddalore.

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

+1cc to Mr.S.Kalyanaraman, Advocate, S.R.No. 33239

C.M.A.No.2315 of 2009

VBA (CO)
GN(11/05/2021)



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