

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2523 of 2010

G.Manivannan

.. Appellant

Vs.

1.T.Lingam

(Remained ex-parte before the Trial Court)

2.National Insurance Co.Ltd.,

No.751, Anna Salai, Third Floor,  
Chennai - 600 002.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 15.04.2010 made in M.C.O.P.No.5682 of 2005 on the file of Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.R.Kalaiarasan  
For R2 : Ms.N.B.Sureka  
For R1 : Ex-parte

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 15.04.2010 made in M.C.O.P.No.5682 of 2005 on the file of Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.5682 of 2005 on the file of Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.09.2005.

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 car belonging to the 1<sup>st</sup> respondent and directed the 2<sup>nd</sup> respondent/Insurance Company being insurer of the said car to pay a sum of Rs.60,500/- as compensation to the appellant/claimant.

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

5. The learned counsel appearing for the appellant contended that the appellant was working as a Ward Assistant in M/s. Apollo Hospitals, Teynampet, Chennai and was earning a sum of Rs.3,000/- per month. The appellant has taken treatment as inpatient and outpatient for more than five months and the Tribunal ought to have granted compensation towards loss of income for five months, instead of three months. P.W.2/Doctor assessed the disability of the appellant at 30%, but the Tribunal erroneously reduced the same to 25% and awarded a meagre sum of Rs.32,500/- towards disability. Due to the injuries suffered by the appellant, there is mal-union of bone at lower end of left hand and stiffness in his left wrist and the movements of his left wrist was restricted. It is difficult for him to lift and hold heavy objects and the Tribunal has not awarded any amount towards loss of earning power. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, Ms.N.B.Sureka, learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal reduced the percentage of disability from 30% to 25% on the ground that assessment of disability by P.W.2/Doctor is on the higher side. The appellant has not produced any document to prove his avocation and income and he lost his income during the treatment period. In such circumstances, the Tribunal fixed a sum of Rs.3,000/- per month as notional income of the appellant and awarded a sum of Rs.9,000/- as compensation towards loss of income for three months, which is excessive. 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 2<sup>nd</sup> respondent and perused the materials available on record.

8. It is the contention of the appellant that he suffered fracture in left wrist, multiple lacerated injuries over both feet, dislocation of left clavicle, internal injury in left hip and multiple injuries all over the body. P.W.2/Doctor has assessed the disability of the appellant as 30%. The Tribunal reduced the same to 25% on the ground that the assessment of P.W.2/doctor is on the higher side and awarded a sum of Rs.32,500/- towards disability by fixing Rs.1,300/- per percentage of disability. The reason given by the Tribunal for reducing the percentage of disability when there is no contra evidence let in by the 2<sup>nd</sup> respondent to disprove the evidence of

P.W.2/doctor and Ex.P6/disability certificate is not correct. Hence, the appellant is entitled to compensation for 30% of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.60,000/- (30% of disability x Rs.2,000/-) by awarding a sum of Rs.2,000/- per percentage of disability.

9. According to the appellant, he was working as a Ward Assistant in M/s. Apollo Hospitals, Teynampet, Chennai and was earning a sum of Rs.3,000/- per month. The appellant failed to substantiate the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.3,000/- per month as notional income of the appellant as claimed by the appellant. The accident occurred in the year 2005 and the notional income fixed by the Tribunal is not meagre. The Tribunal has granted only a meagre sum of Rs.9,000/- towards loss of income for three months. Considering the nature of injuries and period of treatment taken by the appellant, he would not have attended his work at least for a period of five months. Hence, a sum of Rs.15,000/- (Rs.3,000/- X 5 months) is awarded towards loss of income for five months. The amounts awarded by the Tribunal towards transportation and extra nourishment are meagre and hence, the same are enhanced to Rs.3,000/- each. 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 or reduced |
|-------|----------------------------------|---------------------------------|-----------------------------------|---------------------------------------------------|
| 1.    | Loss of income                   | 9,000                           | 15,000                            | Enhanced                                          |
| 2.    | Transportation                   | 2,000                           | 3,000                             | Enhanced                                          |
| 3.    | Extra nourishment                | 2,000                           | 3,000                             | Enhanced                                          |
| 4.    | Damage to clothing and materials | 1,000                           | 1,000                             | Confirmed                                         |
| 5.    | Medical expenses                 | 1,000                           | 1,000                             | Confirmed                                         |
| 6.    | Attendant charges                | 3,000                           | 3,000                             | Confirmed                                         |
| 7.    | Pain and sufferings              | 10,000                          | 10,000                            | Confirmed                                         |
| 8.    | Permanent disability             | 32,500                          | 60,000                            | Enhanced                                          |
|       | Total                            | Rs.60,500/-                     | Rs.96,000/-                       | Enhanced by Rs.35,500/-                           |

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.60,500/- is hereby enhanced to Rs.96,000/- 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 compensation. The 2<sup>nd</sup> 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 to the credit of M.C.O.P.No.5682 of 2005 on the file of Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gbi

To

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

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

+1cc to Mr.N.M.Muthurajan , Advocate SR.No. 19364

+1cc to Mr.N.B.Surekha , Advocate SR.No. 18592

C.M.A.No.2523 of 2010

A.SK(23/09/2020)

WEB COPY