

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1461 of 2013

K.Kasirajan

.. Appellant/Claimant

Vs.

1.M.Mahalingam

2.Bajaj Allianz General Insurance Company Limited,  
Prince Tower, No.25/26,  
College Road, Nungambakkam,  
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 02.02.2012 made in M.C.O.P.No.4590 of 2002 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr.M.L.Ramesh  
For R1 : No appearance  
For R2 : Ms.K.Poomalai

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 02.02.2012 made in M.C.O.P.No.4590 of 2002 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.4590 of 2002 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.03.2002.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the first respondent and directed the 2<sup>nd</sup> respondent-Insurance Company, being the insurer of the car to pay a sum of

Rs.41,000/- 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 in the accident the appellant suffered injury over lower lip and avulsion upper and lower teeth and avulsed teeth extracted, due to loss of avulsed teeth and displaced teeth the appellant is having deranged occlusion causing masticatory dysfunction, saliva spitting, speech disturbance due to loss of lower anterior loss. P.W.2/Doctor examined the appellant and certified that the appellant suffered 20% disability and issued Ex.P7/disability certificate to that effect. The Tribunal without giving any valid reason, reduced the percentage of disability to 15% and awarded a sum of Rs.15,000/- towards permanent disability. The Tribunal ought to have awarded compensation for 20% of disability. The appellant was working as Driver in Radhika Menon, Seshadri Road, Madras - 18 and was earning a sum of Rs.4,500/- per month. The Tribunal has fixed a meagre sum of Rs.3,000/- per month as notional income of the appellant and awarded only a sum of Rs.6,000/- as compensation towards loss of income for two months. The amounts awarded by the Tribunal towards pain and sufferings, extra nourishment and transportation are meagre. The Tribunal has not awarded any amount towards attendant charges, loss of amenities and damages to clothes and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company contended that the Tribunal reduced the percentage of disability assessed by P.W.2/Doctor from 20% to 15% on the ground that the assessment of disability by P.W.2/Doctor appears to be on the higher side. Therefore, the appellant is not entitled to compensation for 20% disability. The appellant has not produced any material evidence to prove the avocation and income. In the absence of any material evidence with regard to avocation and income, 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 two months, which is not meagre. The amounts awarded by the Tribunal under different heads are not meagre and the appellant is not entitled to any amount towards attendant charges, loss of amenities and damages to clothes. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Though notice has been served on the 1<sup>st</sup> respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company and perused the entire materials on record.

9. From the award passed by the Tribunal, it is the contention of the appellant that in the accident, he suffered multiple grievous injuries. P.W.2/Doctor examined the appellant and certified that the appellant suffered 20% disability and issued Ex.P7/disability certificate to that effect. To prove the same, the appellant examined himself as P.W.1 and P.W.2/Doctor who deposed about the nature of injuries and disability. The Tribunal reduced the percentage of disability assessed by P.W.2/Doctor from 20% to 15% on the ground that the assessment of disability by P.W.2/Doctor appears to be on the higher side. The 2<sup>nd</sup> respondent-Insurance Company did not let in any contra evidence to disprove the evidence of P.W.2/Doctor and Ex.P7/disability certificate. In the absence of any contra evidence on the part of the 2<sup>nd</sup> respondent-Insurance Company, the percentage of disability reduced by the Tribunal from 20% to 15% is erroneous. The appellant is entitled to compensation for 20% disability. The accident occurred in the year 2002 and the Tribunal has rightly awarded a sum of Rs.1,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.20,000/- (Rs.1,000/- X 20% of disability).

10. It is the contention of the appellant that he was working as Driver in Radhika Menon, Seshadri Road, Madras - 18 and was earning a sum of Rs.4,500/- per month. The appellant failed to prove the said contention. In the absence of any material evidence with regard to avocation and income, 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 two months. The accident occurred in the year 2002 and the monthly income fixed by the Tribunal is not meagre. Due to the injuries sustained in the accident, the appellant would not have worked at least for a period of six months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.18,000/- (Rs.3,000/- X 6 months). The appellant has taken treatment as in-patient in a private hospital for 6 days and the amounts awarded by the Tribunal towards extra nourishment and transportation are meagre. Considering the nature of injuries and treatment taken by the appellant, the amounts awarded by the Tribunal towards extra nourishment and transportation are enhanced to Rs.5,000/- and Rs.2,000/- respectively. The Tribunal has not awarded any amount towards attendant charges, damages to clothes and loss of amenities. The appellant is entitled to a sum of Rs.5,000/-, Rs.1,000/- and Rs.5,000/- towards attendant charges, damages to clothes and loss of amenities respectively.

The amounts awarded by the Tribunal towards pain and sufferings and medical expenses 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          | 15,000/-                        | 20,000/-                          | Enhanced                               |
| 2.    | Pain and sufferings | 15,000/-                        | 15,000/-                          | Confirmed                              |
| 3.    | Loss of income      | 6,000/-                         | 18,000/-                          | Enhanced                               |
| 4.    | Extra nourishment   | 2,000/-                         | 5,000/-                           | Enhanced                               |
| 5.    | Transportation      | 1,000/-                         | 2,000/-                           | Enhanced                               |
| 6.    | Medical expenses    | 2,000/-                         | 2,000/-                           | Confirmed                              |
| 7.    | Attendant charges   | -                               | 5,000/-                           | Granted                                |
| 8.    | Loss of amenities   | -                               | 5,000/-                           | Granted                                |
| 9.    | Damages to clothes  | -                               | 1,000/-                           | Granted                                |
|       | Total               | Rs.41,000/-                     | Rs.73,000/-                       | enhanced by Rs.32,000/-                |

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.41,000/- is hereby enhanced to Rs.73,000/- 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 amount of 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.4590 of 2002 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.. 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 (CS-VI)

//True Copy//

Sub Assistant Registrar

krk

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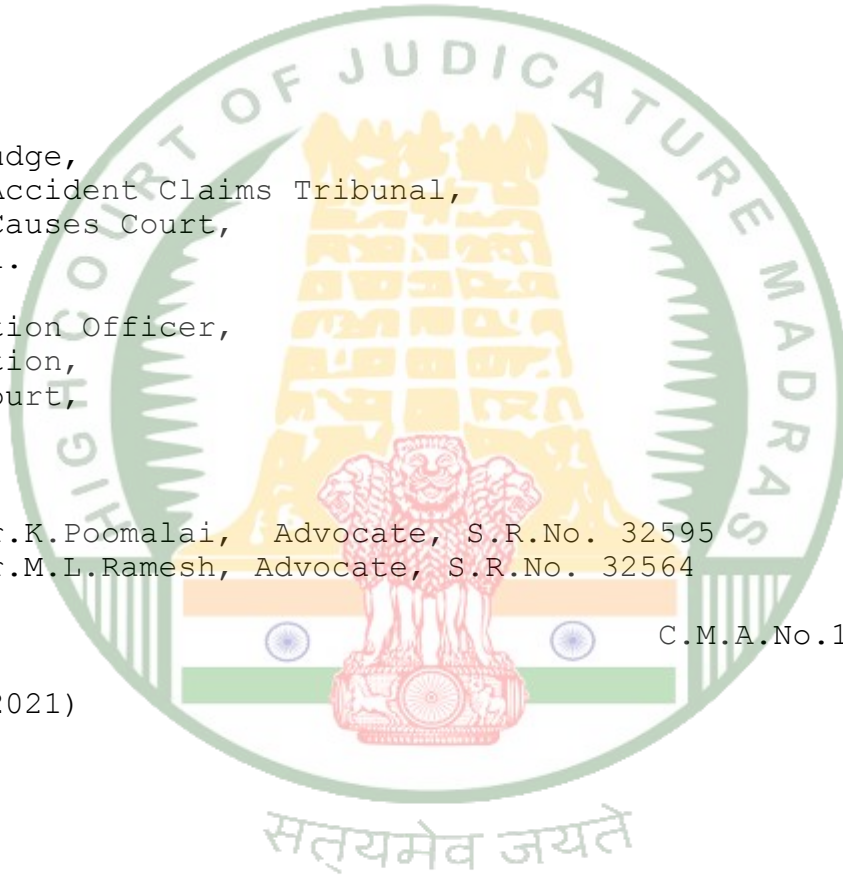
1.The V Judge,  
Motor Accident Claims Tribunal,  
Small Causes Court,  
Chennai.

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

+1cc to Mr.K.Poomalai, Advocate, S.R.No. 32595  
+1cc to Mr.M.L.Ramesh, Advocate, S.R.No. 32564

C.M.A.No.1461 of 2013

VBA (CO)  
GN (04/05/2021)



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