

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1465 of 2013

Vigneshwaran .. Appellant/Claimant
Vs.

1.Nainiappan

(R1 was set ex-parte in the Trial Court)

2.National Insurance Co.Ltd.,

No.75/1, P.S.Sivasamy Salai,

Arul Plaza, 2nd Floor, Mylapore,

Chennai - 600 004.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.11.2011 made in M.C.O.P.No.3712 of 2009 on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr.R.Arundattan

For R2 : Mr.J.Chandran

For R1 : Ex-parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 08.11.2011 made in M.C.O.P.No.3712 of 2009 on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.3712 of 2009 on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai. He filed the above claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 09.08.2009.

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 auto belonging to the first respondent and directed the second respondent-Insurance Company, being insurer of the auto to pay a sum of Rs.1,73,500/- 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 sustained fracture of both bones of left leg, right knee and multiple injuries all over the body. P.W.2/Doctor has assessed the disability suffered by the appellant at 45%. The Tribunal without giving any valid reason, reduced the percentage of disability from 45% to 40% and awarded a meagre sum of Rs.60,000/- towards disability. The Tribunal ought to have adopted multiplier method for awarding compensation towards loss of earning power. The appellant was running a Shop in the name of Sri Gomathi Enterprises at Chrompet and was earning a sum of Rs.10,000/- per month. The Tribunal without considering the same, awarded a very meagre sum of Rs.18,000/- towards loss of income. Due to the injuries and disability, the appellant has taken treatment in MIOT Hospital, Chennai, as in-patient for 7 days from 11.08.2009 to 17.08.2009. The amounts awarded by the Tribunal towards attendant charges, loss of amenities, transportation, extra nourishment, pain & sufferings and medical expenses are meagre and prayed for enhancement of compensation.

6. Per contra, Mr.J.Chandran, learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal reduced the percentage of disability from 45% to 40% on the ground that assessment of disability will vary by 5% from one Doctor to another Doctor. Hence, the appellant is not entitled to compensation for 45% disability. The appellant failed to prove that he suffered functional disability and hence, he is not entitled to compensation towards loss of earning power by adopting multiplier method. The appellant has not produced any documents to show that he lost income during the treatment period. In such circumstances, the compensation awarded by the Tribunal towards loss of income for three months is not meagre. The amounts awarded by the Tribunal under different heads are also not meagre. The appellant has not made out any case for enhancement of compensation 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 second respondent/Insurance Company and perused the materials available on record.

8. From the materials available on record, it is seen that in the accident, the appellant sustained fracture of both bones of

left leg, right knee and multiple injuries all over the body. To prove the same, the appellant examined P.W.2/Doctor, who certified that the appellant sustained 45% disability and issued Ex.P12/disability certificate to that effect. The learned counsel appearing for the second respondent-Insurance Company before the Tribunal has contended that the disability assessed by P.W.2/Doctor is on the higher side. Except oral evidence, he did not let in any contra evidence to disprove the evidence of P.W.2/Doctor and Ex.P12/disability certificate. The Tribunal reduced the percentage of disability to 40% on the ground that assessment of disability will vary by 5% from one Doctor to another Doctor and awarded a sum of Rs.60,000/- (Rs.1,500/- X 40%) towards disability by awarding a sum of Rs.1,500/- per percentage of disability. In the absence of contra evidence to the evidence of P.W.2/Doctor, the reason given by the Tribunal for reducing the percentage of disability is not correct. The appellant is entitled to compensation for 45% disability. The accident occurred in the year 2009 and the appellant is entitled to a sum of Rs.2,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.90,000/- (Rs.2,000 X 45%). The appellant failed to prove that he suffered functional disability and hence, he is not entitled to any compensation towards loss of earning power by adopting multiplier method.

9.It is the contention of the appellant that he was running a Shop in the name of Sri Gomathi Enterprises at Chrompet and was earning a sum of Rs.10,000/- per month. The appellant has produced Ex.P4/copy of degree certificate, Ex.P7/copy of certificate of registration with regard to the business in Commercial Tax Department and Ex.P10/copy of PAN card. But, the appellant has not produced the account statement or income tax particulars to prove his income. In the absence of material evidence with regard to income, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the appellant and awarded compensation towards loss of income for three months. The accident occurred in the year 2009 and the monthly income fixed by the Tribunal is meagre. Therefore, a sum of Rs.8,000/- per month is fixed as notional income of the appellant. Considering the nature of injuries sustained by the appellant, he would not have attended his work atleast for a period of four months. Hence, the amount awarded towards loss of income is enhanced to Rs.32,000/- (Rs.8,000/- X 4 months). The appellant has taken treatment in the MIOT Hospital, Chennai, as in-patient for 7 days from 11.08.2009 to 17.08.2009. The amounts awarded by the Tribunal towards transportation and extra nourishment are meagre. Considering the nature of injuries and period of treatment taken by the appellant, the compensation awarded by the Tribunal towards transportation and extra

nourishment are enhanced to Rs.10,000/- and Rs.15,000/- respectively. The amounts awarded by the Tribunal towards pain and sufferings, medical expenses, damage to clothes, attendant charges, future medical expenses and loss of amenities 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	60,000/-	90,000/-	Enhanced
2.	Pain and suffering	20,000/-	20,000/-	Confirmed
3.	Medical expenses	4,500/-	4,500/-	Confirmed
4.	Extra nourishment	10,000/-	15,000/-	Enhanced
5.	Transportation	5,000/-	10,000/-	Enhanced
6.	Damage to clothes	1,000/-	1,000/-	Confirmed
7.	Attendant charges	15,000/-	15,000/-	Confirmed
8.	Future medical expenses	20,000/-	20,000/-	Confirmed
9.	Loss of amenities	20,000/-	20,000/-	Confirmed
10.	Loss of income	18,000/-	32,000/-	Enhanced
	Total	Rs.1,73,500/-	Rs.2,27,500/-	enhanced by Rs.54,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,73,500/- is hereby enhanced to Rs.2,27,500/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court together 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.3712 of 2009 on the file of the Motor Accidents 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.

The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gbi
To

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

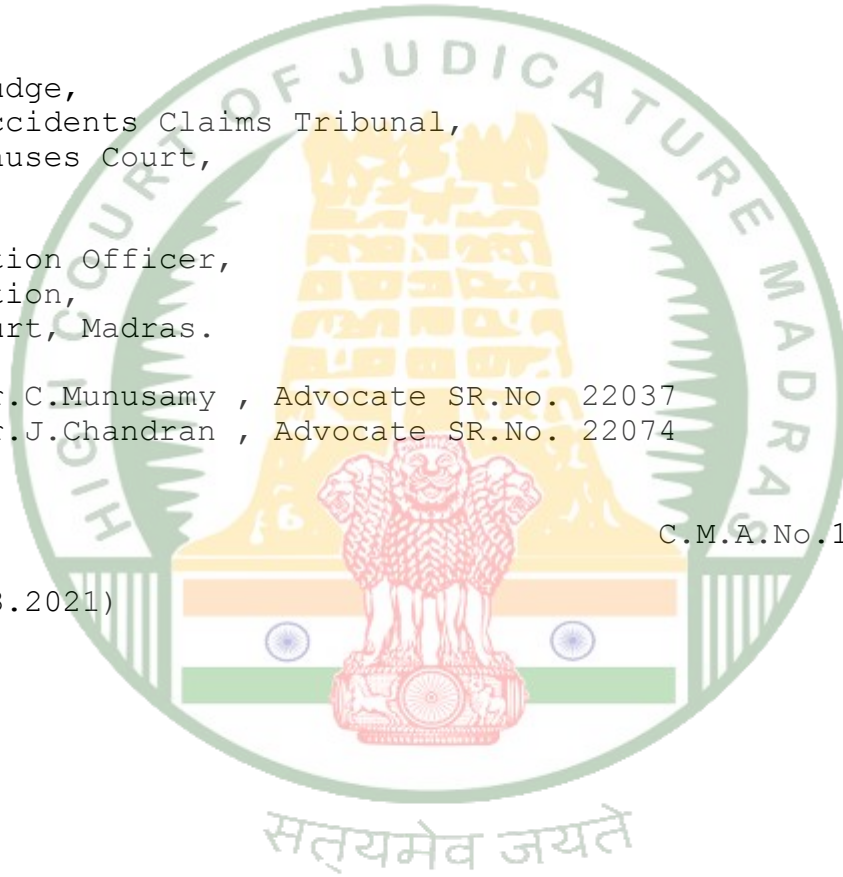
2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.C.Munusamy , Advocate SR.No. 22037

+1cc to Mr.J.Chandran , Advocate SR.No. 22074

C.M.A.No.1465 of 2013

rsv co
A.SK(19.03.2021)



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