

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.1748 OF 2012

G.Edwin

.. Appellant/Petitioner

Vs.

1. M.Selvam

2. National Insurance Co. Ltd.,
No.751, Anna Salai,
Chennai- 600 002.

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.07.2011 made in M.A.C.T.O.P.No.5474 of 2004 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.N.M.Muthurajan

For R1 : Ex-parte

For R2 : Mr.S.Arunkumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant seeking enhancement of compensation granted by the Tribunal in the award dated 14.07.2011 made in M.A.C.T.O.P.No.5474 of 2004 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant is the claimant in M.A.C.T.O.P.No.5474 of 2004 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.6,50,000/-as compensation for the injuries sustained by him in the accident that took place on 02.09.2004.

3.The case of the appellant is that on 02.09.2004, at about 17.30 hours, the petitioner was driving an auto bearing Regn. No.TN-01-A-3684 from Egmore to Thousand Lights towards west to east direction on Greams Road. While he was so proceeding near Manson Site Police Quarters, a goods auto bearing Regn.No.TN-22-AE-7656, which came from opposite direction, was driven in a rash and negligent manner and dashed against the appellant's auto. Due to the sudden incident, the appellant sustained grievous injuries.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the goods auto belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, on behalf of the 1st respondent, to pay a sum of Rs.1,27,480/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel for the appellant would submit that, the appellant suffered supra condylar fracture right femur, transverse fracture right patella, dislocation of right knee and other injuries. He was treated as in-patient at Government Royapettah Hospital, Chennai from 15.09.2004 to 14.10.2004. On 21.09.2004, ORIF done and DCS plating done. Internal nailing and plate fixation was also done and bone grafting was done. Despite all these facts, the amount awarded by the Tribunal is very meager. Further, the amount awarded by the Tribunal is contrary to law and against all probabilities of the cases. Hence, the learned counsel for the appellant prayed to enhance the compensation awarded by the Court below.

6.The learned counsel for the second respondent submitted that before the Tribunal, the 1st respondent/owner of the vehicle remained ex-parte and he denied all the averments made in the petition. The claim of Rs.6,50,000/- is highly excessive and baseless. The accident had occurred only due to the rash and negligent act of the appellant. There is no fault on the part of the 1st respondent. Hence, the respondents are not liable to pay the compensation amount and he prayed for dismissal of this appeal.

7.Heard Mr.N.M.Muthurajan, learned counsel appearing for the appellant and Mr.S.Arunkumar, learned counsel appearing for the second respondent and perused the materials available on record.

8.A perusal of the records shows that the claimant has sustained fracture of femur and patella bone in the right leg and the fractured bones are malunited. The movement of the knee is restricted in flexing 0 to 90 degrees. He cannot squat or sit cross legged. There is ugly scar in thigh and knee, where surgeries are conducted. Dr.K.J.Mathiazhagan (PW2) has assessed the partial permanent disability as 40% and the Tribunal has reduced and fixed the same as 35%. Since the appellant suffered fracture in the right leg alone in the femur and in the right knee, the percentage of disability can be reduced to 1/3rd with reference to the whole body. Hence, the Tribunal has fixed the functional disability as 12%. The appellant has stated that he was an auto driver by profession and earned Rs.300/- per day at the time of accident. He has not produced any evidence to show his monthly income. Hence, in the absence of any documentary evidence, as per the precedent, the notional monthly income is fixed as Rs.3,000/- Hence the Tribunal fixed Rs.3,000/- towards monthly income. As per the second schedule of M.V.Actn the multiplier applied is 14 as per Sarala Varma's Case. Hence, the Tribunal has awarded a sum of Rs.60,480/- (Rs.3,000 X 12 X 14 X 12% = Rs.60,480/-). This Court is of the considered opinion that by considering the nature of injuries sustained by the appellant and without taking the percentage of disability, which was reduced to 1/3rd with reference to the whole body by the Tribunal, feels it proper to fix the disability at 35% and awards a sum of Rs.1,76,904/- towards "loss of earnings" (Rs.3,000 X 12 X 14 X 35/100). The Tribunal has fixed the functional disability at 12%. Based on various Judgements of this Court, the Tribunal concluded that a sum of Rs.2,000/- can be compensated for 1% of injury and hence, Rs.24,000/- (Rs.2,000/- x 12%) is awarded towards "permanent disability". Considering the nature of the injuries and the disability suffered by the appellant, this Court is inclined to enhance the same to Rs.35,000/-. The Tribunal has rightly awarded a sum of Rs.9,000/- (Rs.3,000/- X 3 months) towards "loss of income" during treatment. Hence, this Court is not inclined to interfere with the same. The Tribunal has awarded a sum of Rs.1,000/- towards "transportation" and the same is hereby increased to Rs.5,000/-. The Tribunal has awarded a sum of Rs.2,000/- under the head "Extra Nourishment", which is hereby enhanced to Rs.5,000/-. The amounts awarded by the Tribunal under other heads are just and reasonable and this Court deem it proper to confirm the same. The award passed by this Court under various heads is extracted hereunder:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning power/capacity	60,480/-	1,76,904/-	enhanced
2.	Permanent Disability	24,000/-	35,000/-	enhanced
3.	Loss of income during treatment	9,000/-	9,000/-	confirmed
4.	Transportation	1,000/-	5,000/-	enhanced
5.	Extra Nourishment	2,000/-	5,000/-	enhanced
6.	Damages to Clothes and Articles	1,000/-	1,000/-	confirmed
7.	Medical Expenses	10,000/-	10,000/-	confirmed
8.	Pain and Sufferings	20,000/-	20,000/-	confirmed
	Total	Rs.1,27,480/-	Rs.2,61,904/-	enhanced by Rs.1,34,424/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,27,480/- is hereby enhanced to Rs.2,61,904/- 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, on behalf of the 1st respondent, 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 already withdrawn, if any. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sbn

To

1.The Motor Accident Claim Tribunal,
II Small Causes Court,
Chennai.

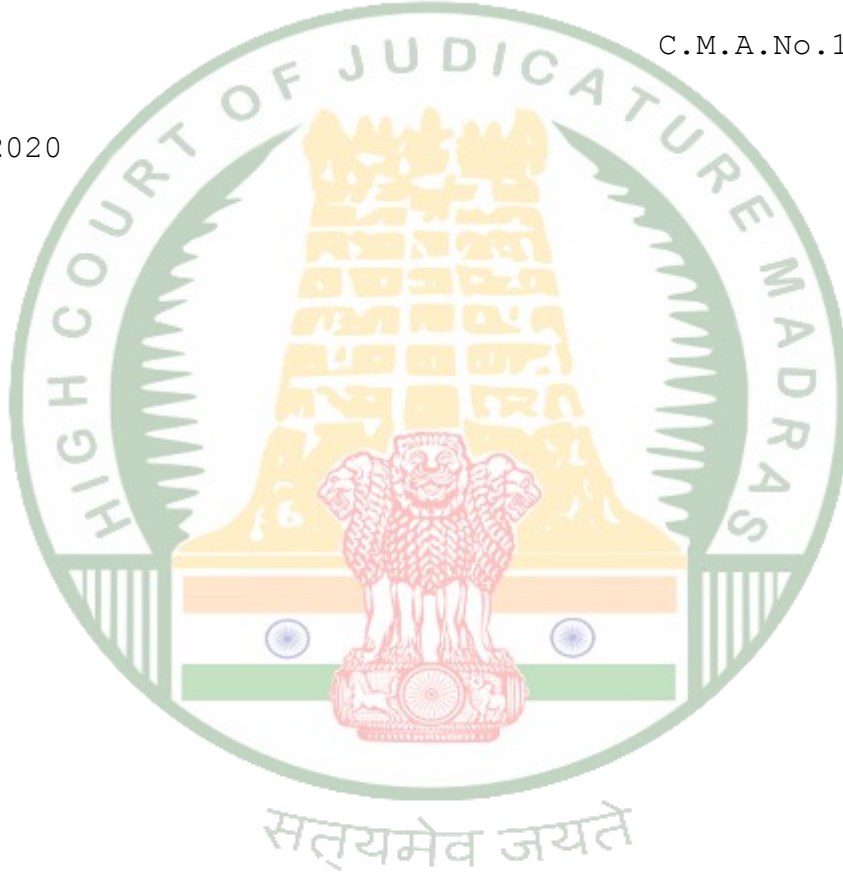
2.The Section Officer,
V.R Section,
High Court, Madras.

+lcc to Mr.N.M.Muthurajan, Advocate, S.R.No.6653

+lcc to Mr.S.Arunkumar, Advocate, S.R.No.6733

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MR(CO)
CS/11/09/2020



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