

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1870 of 2013

B.Dinesh Rao

.. Appellant/ Petitioner

Vs.

1.G.Satheesh Babu

2.The Reliance General Insurance Co. Ltd.,
Unit No.1, 3rd Floor,
No.23, Spur Tank Road,
Chetpet, Chennai 31. ... Respondents/Respondents
(R1 was set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.01.2013, made in M.C.O.P. No.191 of 2011, on the file of the III Additional District Court, (Motor Accident Claims Tribunal) Poonamallee.

For Appellant : Ms. S. Ramya
for M/s. J. Mahalingam

For Respondents : No appearance (For R2)
R1 - Exparte

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of the compensation granted by the Tribunal in award dated 11.01.2013, made in M.C.O.P. No.191 of 2011, on the file of the III Additional District Court, (Motor Accident Claims Tribunal) Poonamallee.

2.The appellant-claimant filed M.C.O.P. No.191 of 2011, on the file of the III Additional District Court, (Motor Accident Claims Tribunal) Poonamallee, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.11.2010.

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 1st respondent and directed the 2nd respondent who is the insurer of the offending vehicle to pay a sum of Rs.2,87,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 11.01.2013, made in M.C.O.P. No.191 of 2011, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained fracture of L1, L2 and L3 with spinal cord compression, L2 burst fracture with paraparesis and also sustained serious multiple injuries all over the body. Immediately after the accident, he was given first aid treatment at Government Royapettah Hospital and was admitted as in-patient in Sri Devi Hospital and has taken treatment from 27.11.2010 to 30.11.2010. Again, he was admitted at Billroth Hospital on 30.11.2010 and has taken treatment as in-patient till 07.12.2010. The appellant examined himself as P.W.1 and examined P.W.2 - Doctor who deposed the nature of injuries, treatment taken and disability suffered by the appellant. P.W.2 - Doctor assessed that the appellant suffered 40% disability. The Tribunal considering the disability suffered by the appellant, ought to have granted compensation by adopting multiplier method for loss of earning power and disability separately. The appellant was working as Hotel Supervisor in Sangeetha Fast Food and was earning a sum of Rs.12,000/- per month. The Tribunal erroneously fixed a meagre sum of Rs.6,000/- per month as notional income and granted only Rs.12,000/- towards loss of income for two months. The total compensation granted by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6.Though the 2nd respondent-Insurance Company entered appearance through counsel, there is no representation for them at the time of hearing on 06.10.2020 and today also, there is no representation for them.

7.Heard learned counsel appearing for the appellant and perused the materials available on record.

8.It is the contention of the appellant that in the accident, he suffered fractures and multiple injuries all over the body. He examined himself as P.W.1 and deposed to that effect. The appellant also examined P.W.2 - Doctor who deposed the nature of injuries, treatment taken and disability suffered

by the appellant. P.W.2- Doctor certified that the appellant suffered 40% disability and issued disability certificate marked as Ex.P10. The Tribunal considering the evidence of P.W.2-Doctor and disability certificate, granted a sum of Rs.80,000/- towards permanent disability, fixing Rs.2,000/- per percentage for 40% disability. From the award of the Tribunal, it is seen that P.W.2- Doctor did not depose that appellant could not do any work or work as Hotel Supervisor in Sangeetha Fast Food Hotel. On the other hand, the appellant produced Ex.P9- Salary Certificate, which shows that he worked till 01.11.2011, i.e., even after one year of accident. In view of Ex.P9, the appellant is not entitled to compensation by adopting multiplier method for loss of earning power and the compensation for the disability awarded by the Tribunal by applying percentage method is proper. The accident is of the year 2010. The appellant is entitled to a sum of Rs.3,000/- per percentage for 40% disability. Hence, the compensation granted by the Tribunal towards permanent disability is enhanced to Rs.1,20,000/-.

9.The appellant claimed that he was working as a Hotel Supervisor in Sangeetha Fast Food and was earning a sum of Rs.12,000/- per month before the accident. The appellant has not filed attendance register or salary slip to prove the same and failed to examine the author of Ex.P9. In view of the same, the Tribunal did not accept Ex.P9 and fixed a sum of Rs.6,000/- per month as notional income and granted Rs.12,000/- towards loss of income for two months. The accident is of the year 2010. The monthly income fixed by the Tribunal is meagre. A sum of Rs.8,000/- per month is fixed as notional income of the appellant. Due to the injuries and disability, the appellant would not have worked atleast for a period of six months. Hence, the appellant is entitled to a sum of Rs.48,000/- towards loss of income for a period of six months. Due to the injuries, the appellant has taken treatment as inpatient in Hospital in two different spells viz., 27.11.2010 to 30.11.2010 and 30.11.2010 to 07.12.2010. He has filed discharge summaries viz., Exs.P3 and P4 to prove the same. The Tribunal has not awarded any amount for attendant charges and loss of amenities. Considering the nature of injuries and treatment taken, a sum of Rs.10,000/- each is granted towards attendant charges and loss of amenities. The sum of Rs.3,000/- awarded by the Tribunal towards extra nourishment is meagre and hence, the same is enhanced to Rs.10,000/-. The amounts awarded by the Tribunal under other heads 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.	Loss of earning	12,000/-	48,000/-	Enhanced
2.	Transportation	5,000/-	5,000/-	Confirmed
3.	Pain and suffering	30,000/-	30,000/-	Confirmed
4.	Medical bills	1,57,000/-	1,57,000/-	Confirmed
5.	Extra nourishment	3,000/-	10,000/-	Enhanced
6.	Attendant charges	-	10,000/-	Granted
7.	Loss of amenities	-	10,000/-	granted
8.	Disability	80,000/-	1,20,000/-	Enhanced
	Total	2,87,000/-	3,90,000/-	Enhanced by Rs.1,03,000/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.2,87,000/- is enhanced to Rs.3,90,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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.191 of 2011. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.1,03,000/-. No costs.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

gsa

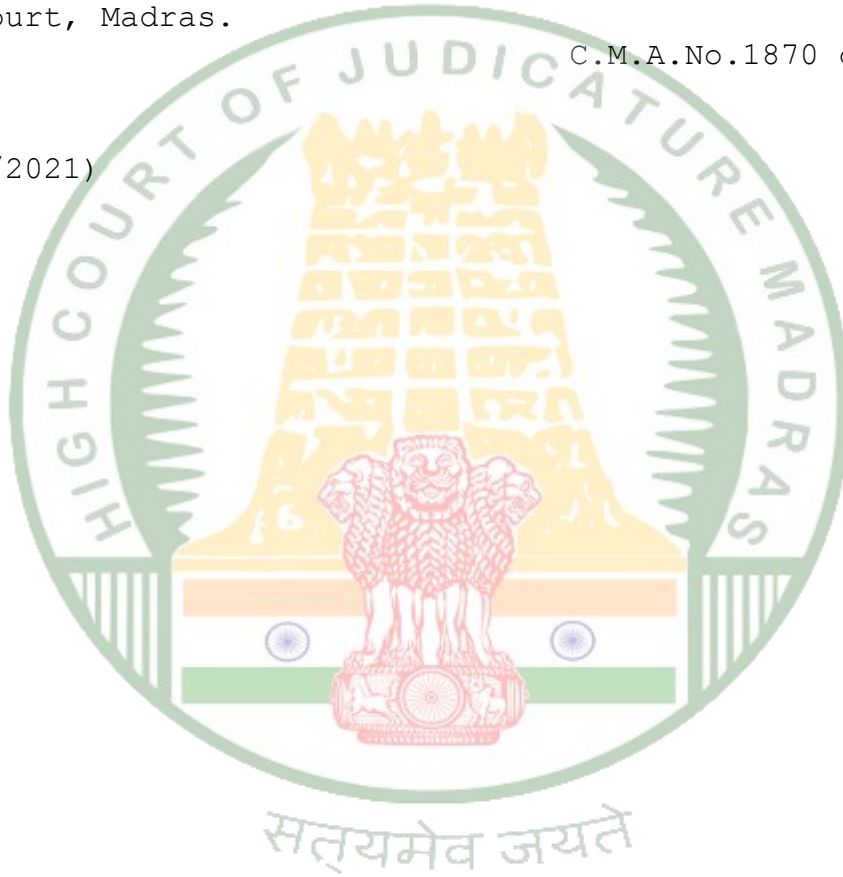
To

1.The III Additional District Judge,
(Motor Accident Claims Tribunal),
Poonamallee.

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

C.M.A.No.1870 of 2013

PVS (CO)
RMP (13/05/2021)



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