

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.279 OF 2011

T.Murugavel

.. Appellant

Vs.

1. Srinivasan

2. United India Insurance Company Ltd.,
No.134, Greams Road,
Chennai 6.

... Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.06.2010 made in M.C.O.P.No.2481 of 2006 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant : Mr.F.Terry Chellaraja
For R1 : No appearance
For R2 : Mr.Dhiraviyanathan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 03.06.2010 made in M.C.O.P.No.2481 of 2006 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.2481 of 2006 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by him in the accident that took place on 31.12.2005.

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 lorry belonging to the first respondent and directed the second respondent, being insurer of the said lorry to pay a sum of Rs.1,40,500/- 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 right leg, crush injury below right ankle, amputation of great toe, II and III toes of right foot. Due to the fracture, he could not continue his work as he was doing earlier. The appellant examined the Doctor as P.W.2, who has assessed the disability of the appellant as 52% and marked the disability certificate as Ex.P5 to prove the nature of injuries. The Tribunal reduced the percentage of disability from 52% to 40% holding that the disability assessed by the Doctor is on the higher side and awarded a sum of Rs.80,000/- (Rs.2,000/- x 40%) towards disability at the rate of Rs.2,000/- per percentage of disability. The Tribunal ought to have adopted multiplier method and granted compensation. The appellant was working as a driver and was earning a sum of Rs.6,000/- per month. The Tribunal has fixed only a meagre sum of Rs.5,000/- as monthly income of the appellant and awarded a meagre sum of Rs.10,000/- (Rs.5,000/- x 2 months) towards loss of income for a period of two months. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that in the absence of any evidence with regard to income of the appellant, the Tribunal fixed a sum of Rs.5,000/- as monthly income of the appellant, which is not meagre. The appellant has not produced any documentary evidence to prove that he suffered functional disability. Hence, the percentage method adopted by the Tribunal is proper. 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 learned counsel appearing for the second respondent and perused the entire materials on record.

8(a). It is the contention of the appellant that in the

accident, he sustained fracture and amputation of toes on right foot. To prove the injuries sustained by him, the appellant examined Dr.J.R.R.Thiagarajan as P.W.2, who has assessed the disability of the appellant as 52% and marked the disability certificate as Ex.P5. The Tribunal reduced the percentage of disability to 40% on the ground that the disability assessed by the Doctor is on the higher side and awarded a sum of Rs.80,000/- (Rs.2,000/- X 40%) towards disability at the rate of Rs.2,000/- per percentage of disability. The reason given by the Tribunal for reducing the percentage of disability is not proper. Therefore, the appellant is entitled to compensation for 52% disability at the rate of Rs.2,000/- per percentage of disability. The appellant has not proved that he suffered functional disability and there is loss of earning capacity. In view of the same, the percentage method adopted by the Tribunal for awarding compensation towards disability is proper. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,04,000/- (Rs.2,000/- X 52).

(b). According to the appellant, he was aged 33 years at the time of the accident. The appellant was working as a driver and was earning a sum of Rs.6,000/- per month. The Tribunal fixed the monthly income as Rs.5,000/- and awarded a sum of Rs.10,000/- (Rs.5,000/- X 2) towards loss of income for a period of two months. The accident is of the year 2005 and the monthly income fixed by the Tribunal is proper. Due to the injuries, the appellant would not have worked atleast for a period of six months. Thus, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.30,000/- (Rs.5,000/- x 6).

(c). The appellant has taken treatment as in-patient in Government Hospital, Chengalpattu, from 31.12.2005 to 06.02.2006 for 38 days. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the nature of injuries and period of treatment taken by the appellant and disability, a sum of Rs.19,000/- is awarded towards attendant charges for 38 days at the rate of Rs.500/- per day and Rs.20,000/- towards loss of amenities. The Tribunal has awarded a meagre sum of Rs.10,000/- towards extra nourishment and the same is hereby enhanced to Rs.15,000/-. The amounts awarded by the Tribunal under all 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 income	10,000/-	30,000/-	enhanced
2.	Transportation	5,000/-	5,000/-	confirmed
3.	Extra nourishment	10,000/-	15,000/-	enhanced
4.	Damage to clothes	500/-	500/-	confirmed
5.	Medical expenses	5,000/-	5,000/-	confirmed
6.	Pain & sufferings	30,000/-	30,000/-	confirmed
7.	Disability	80,000/-	1,04,000/-	enhanced
8.	Attendant charges	-	19,000/-	granted
9.	Loss of amenities	-	20,000/-	granted
	Total	Rs.1,40,500/-	Rs.2,28,500/-	Enhanced by Rs.88,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,40,500/- is hereby enhanced to Rs.2,28,500/- 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 necessary Court fee, if any on the enhanced amount of compensation. The second 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 is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary application before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vkr

To

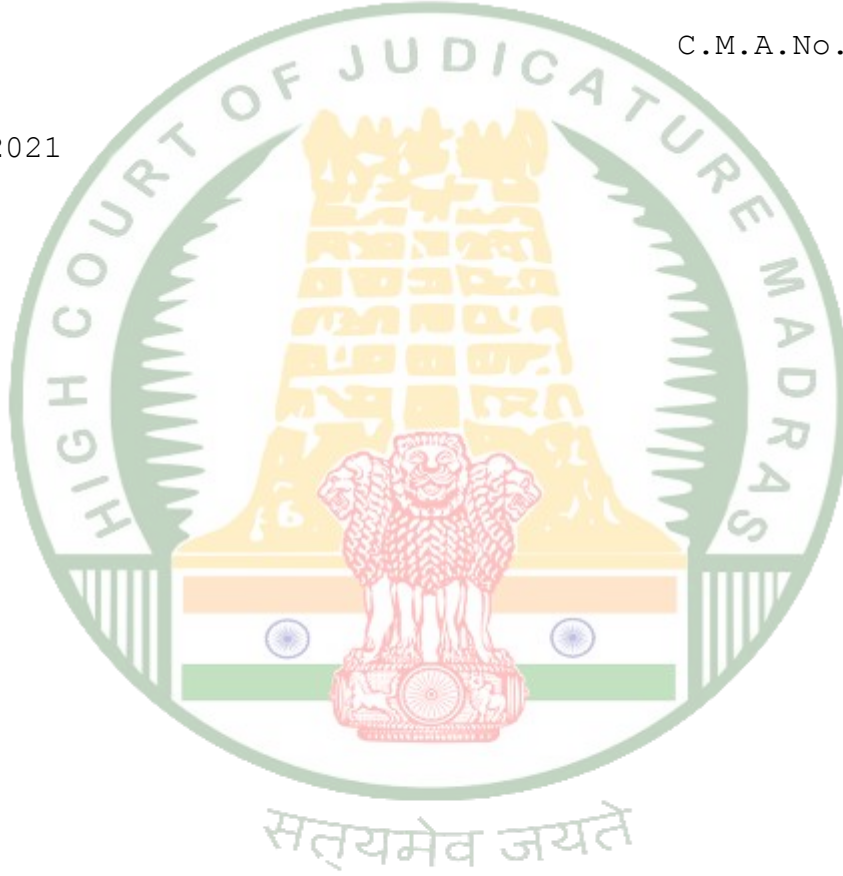
1. The Motor Accident Claims Tribunal,
VI Judge, Small Causes Court,
Chennai.
2. The Section Officer,
VR Section, High Court,
Madras.

+lcc to M/s.M.Malar, Advocate in Sr.No.24238

+lcc to Mr.Dhiraviyanathan, Advocate in Sr.No.23968

C.M.A.No.279 of 2011

KJ(CO)
CS/08/02/2021



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