

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2189 of 2015

G.Nagasubramaniyam

... Appellant

Vs.

1.V.Rajamani

2.National Insurance Company Ltd.  
No751, Anna salai  
Chennai-2.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.11.2014 made in M.C.O.P.No.1207 of 2013 on the file of Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai.

For Appellant : Ms.A.Subadra for Ms.M.Malar

For R1 : Mr.T.G.Ravichandran

For R2 : Mrs.N.B.Surekha

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 25.11.2014 made in M.C.O.P.No.1207 of 2013 on the file of Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai.

2.The appellant is claimant in M.C.O.P.No.1207 of 2013 on the file of Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai. He filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.11.2012.

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 car belonging to the 1<sup>st</sup> respondent and directed the 2<sup>nd</sup> respondent/Insurance Company being insurer of the said car to pay a sum of Rs.2,44,916/- 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/claimant contended that the appellant was aged 42 years at the time of accident and was earning a sum of Rs.25,000/- per month by working as Senior QA Engineer in Star Health and Allied Insurance Company, Guindy, Chennai and marked Ex.P7/pay slips & Ex.P8/loss of pay certificate to prove the same. The Tribunal without considering the same, has fixed a sum of Rs.10,000/- as monthly income of the appellant. The appellant sustained fracture of right distal tibia with fracture of distal 1/3<sup>rd</sup> fibula with comminuted fracture DER left wrist. He was undergone open reduction and internal fixation with LCP 3 holed for wrist, clover leaf plating for tibia and 1/3 semitubular plating for tibia. P.W.4/Doctor has assessed the permanent disability of the appellant as 65%. The Tribunal without any reason reduced the disability to 45%. The Tribunal ought to have awarded compensation separately towards permanent disability and loss of earning capacity by adopting multiplier method. The appellant took treatment as in-patient in Soundarapandian bone and joint hospital from 26.11.2012 to 10.12.2012. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. 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 respondents contended that the appellant has not proved that he suffered functional disability. In the absence of any documentary evidence to prove that the appellant suffered functional disability, the percentage method applied by the Tribunal is proper. The Tribunal after considering the materials available on record, has awarded just compensation. 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 respondents and perused all the materials available on record.

8. It is the contention of the appellant that he suffered multiple fractures. The appellant has examined Dr.Thiagarajan as P.W.2, who has assessed the disability of the appellant as 65%

permanently. The appellant has marked Ex.P5/discharge summary, Exs.P9 & P12/x-rays & Ex.P11/disability certificate to prove the injuries sustained by him. The Tribunal reduced the disability to 55% holding that the percentage of disability assessed by P.W.2/Doctor is on the higher side. The reason given by the Tribunal for reducing the percentage of disability is not correct. The appellant is entitled to compensation for 65% disability. The appellant has not proved that he suffered functional disability and there is loss of earning capacity. Therefore, the percentage method applied by the Tribunal is correct. But a sum of Rs.2,000/- awarded by the Tribunal per percentage of disability is not correct. The accident is of the year 2012 and the appellant is entitled to a sum of Rs.3,000/- per percentage of disability. Therefore, a sum of Rs.1,95,000/- (Rs.3,000/- X 65%) is awarded towards disability.

9. According to the appellant, he was aged 42 years at the time of accident and was earning a sum of Rs.25,000/- per month by working as Senior QA Engineer in Star Health and Allied Insurance Company, Guindy, Chennai. The appellant has marked Ex.P7/pay slips to prove his avocation and income. The Tribunal rejected Ex.P7/pay slips on the ground that employer of the appellant was not examined to depose about the income of the appellant, fixed a sum of Rs.10,000/- as monthly income of the appellant and awarded a sum of Rs.40,000/- (Rs.10,000/- X 4) towards loss of income for four months. The accident is of the year 2012 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.12,000/- is fixed as monthly income of the appellant. Due to the injuries sustained by the appellant, he would not have attended his work atleast for a period of 6 months. Therefore, a sum of Rs.72,000/- (Rs.12,000/- X 6) is awarded towards loss of income for six months. The appellant has taken treatment as in-patient in Soundarapandian bone and joint hospital from 26.11.2012 to 10.12.2012. The Tribunal has not awarded any amounts towards attendant charges and loss of amenities. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.25,000/- each is awarded towards attendant charges and loss of amenities. A sum of Rs.10,000/- awarded by the Tribunal towards extra nourishment is meagre and the same is hereby enhanced to Rs.25,000/-. The amounts awarded by the Tribunal under all the 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 or reduced |
|------|--------------------|---------------------------------|-----------------------------------|---------------------------------------------------|
| 1.   | Loss of income     | 40,000                          | 72,000                            | Enhanced                                          |
| 2.   | Transportation     | 10,000                          | 10,000                            | Confirmed                                         |
| 3.   | Extra nourishment  | 10,000                          | 25,000                            | Enhanced                                          |
| 4.   | Medical expenses   | 34,916                          | 34,916                            | Confirmed                                         |
| 5.   | Pain and suffering | 40,000                          | 40,000                            | Confirmed                                         |
| 6.   | Disability         | 1,10,000                        | 1,95,000                          | Enhanced                                          |
| 7.   | Attendant charges  | -                               | 25,000                            | Granted                                           |
| 8.   | Loss of amenities  | -                               | 25,000                            | Granted                                           |
|      | Total              | 2,44,916                        | 4,26,916                          | Enhanced by Rs.1,82,000 /-                        |

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,44,916/- is hereby enhanced to Rs.4,26,916/- 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 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. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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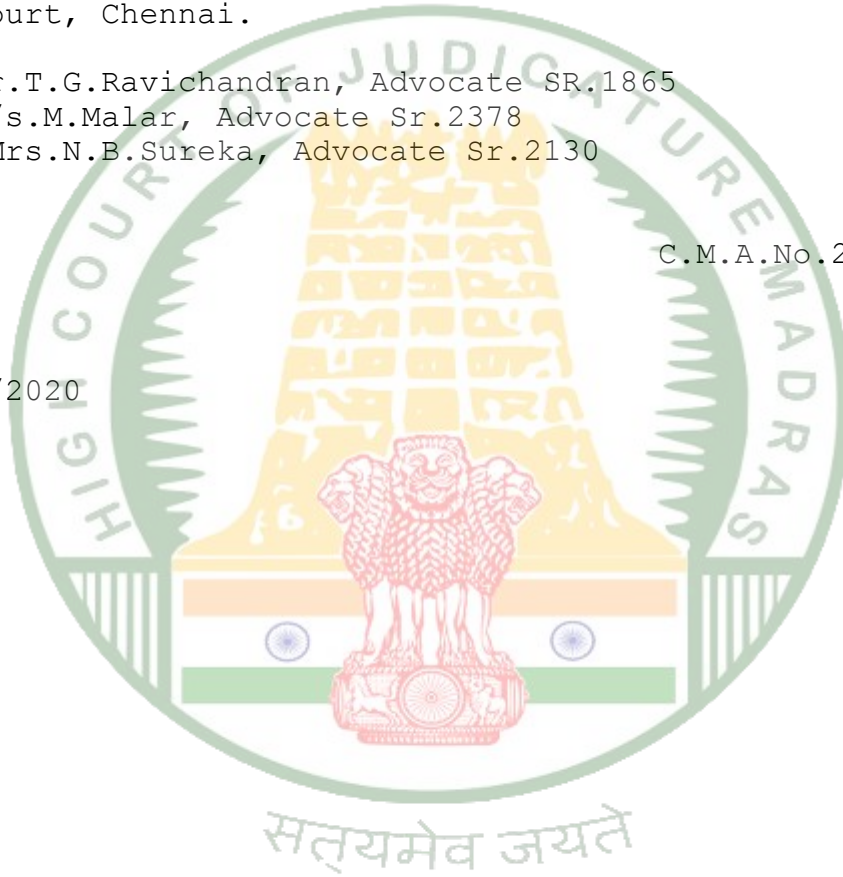
1.The III Judge,  
The Motor Accident Claims Tribunal,  
Small Causes Court, Chennai.

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

+1cc to Mr.T.G.Ravichandran, Advocate SR.1865  
+1cc to M/s.M.Malar, Advocate Sr.2378  
+1ccd to Mrs.N.B.Sureka, Advocate Sr.2130

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