

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2002 of 2013

Ramachandran

.. Appellant/Petitioner

Vs.

1.A. Selvaraj

(R1 was set exparte before the Tribunal)

2.The New India Assurance Co. Ltd.,

No. 45, Moore Street,

Chennai 1.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 29.11.2012, made in M.C.O.P. No. 4229 of 2010, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. N.M. Elumalai

For Respondents : Mr. K. Vinod

for M/s. Elveera Ravindran (for R2)

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 29.11.2012, made in M.C.O.P. No. 4229 of 2010, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-claimant filed M.C.O.P. No. 4229 of 2010, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident that took place on 20.10.2010.

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 Auto belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.49,000/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 29.11.2012, made in M.C.O.P. No. 4229 of 2010, the appellant has come out with the present appeal.

5. Learned counsel appearing for the appellant contended that the appellant was working as a Mason and was earning a sum of Rs.10,000/- per month. The Tribunal without fixing the monthly income of the appellant, erroneously granted a meagre sum of Rs.5,000/- towards loss of income. Due to the accident, the appellant suffered grievous injuries and fractures. The appellant proved the same by examining P.W.2 - Doctor, who assessed that the appellant suffered 45% disability and issued Ex.P4 - Disability Certificate to that effect. The Tribunal reduced the same to 10% on the ground that the assessment of P.W.2 - Doctor is on the higher side. The appellant is entitled to compensation for 45% disability. The appellant has taken treatment as in-patient for a period of 8 days. The Tribunal has not awarded any amount towards attendant charges. In any event, the total compensation granted by the Tribunal under different heads are meagre and prayed for enhancement of the same.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering all the materials on record, rightly holding that the assessment of the P.W.2 - Doctor is on the higher side, reduced the percentage of disability suffered by the appellant and awarded compensation under different heads, which are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

8. It is the contention of the appellant that in the accident, he suffered grievous injuries in head, fracture in right hand and has taken treatment as in-patient in Government Stanley Hospital, Chennai, from 20.10.2010 to 27.10.2010, for a period of 8 days. P.W.2- Doctor has assessed the percentage of disability suffered by the appellant as 45%. The respondents did not let in any evidence to disprove the evidence of P.W.2 - Doctor and disability certificate marked as Ex.P4. The Tribunal reduced the percentage of disability to 10% on the ground that the disability assessed by the Doctor is on the higher side. The

reason given by the Tribunal for reducing the percentage of disability is not valid. The appellant is entitled to compensation towards disability for 45% disability as there is no contra evidence. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.90,000/- (Rs.2,000/- x 45% disability). The Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the period of treatment taken and the nature of injuries suffered by the appellant, this Court awards a sum of Rs.7,500/- towards attendant charges and Rs.10,000/- towards loss of amenities. The amounts awarded by the Tribunal towards extra nourishment is meagre and hence, the same is enhanced to Rs.5,000/-.

9.It is the contention of the appellant that at the time of accident, the appellant was working as a Mason and was earning a sum of Rs.10,000/- per month. He has failed to prove the same. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal has not fixed the income of the appellant. The accident is of the year 2010. Considering the year of accident and the nature of work, this Court fixes a sum of Rs.7,500/- per month as notional income of the appellant. Due to the injuries sustained in the accident, he would not have worked atleast for a period of 3 months. Hence, a sum of Rs.22,500/- [Rs.7,500/- x 3 months] is awarded towards loss of income for a period of 3 months. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, they 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	20,000/-	90,000/-	Enhanced
2.	Pain and suffering	15,000/-	15,000/-	Confirmed
3.	Extra nourishment	3,000/-	5,000/-	Enhanced
4.	Attendant charges	-	7,500/-	Granted
5.	Transport expenses	5,000/-	5,000/-	Confirmed
6.	Loss of income	5,000/-	22,500/-	Enhanced

7.	Damage to clothes	1,000/-	1,000/-	Confirmed
8.	Loss of amenities	-	10,000/-	Granted
	Total	49,000/-	1,56,000/-	Enhanced by Rs.1,07,000/-

10.It is brought to the notice of this Court by the learned counsel appearing for the 2nd respondent that the 2nd respondent has filed C.M.A. No. 1650 of 2019 against the appellant and 1st respondent, challenging only the liability fixed on them and not challenging the quantum of compensation granted by the Tribunal. The said appeal was dismissed by this Court vide order dated 07.03.2019 and the award passed by the Tribunal was confirmed.

11.In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.49,000/- is enhanced to Rs.1,56,000/- along with interest and costs. The 2nd respondent-Insurance Company 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. 4229 of 2010. 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.1,07,000/-. No costs.

Sd/-
सत्यमेव जयते
Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

gsa

To

1.The V Judge,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

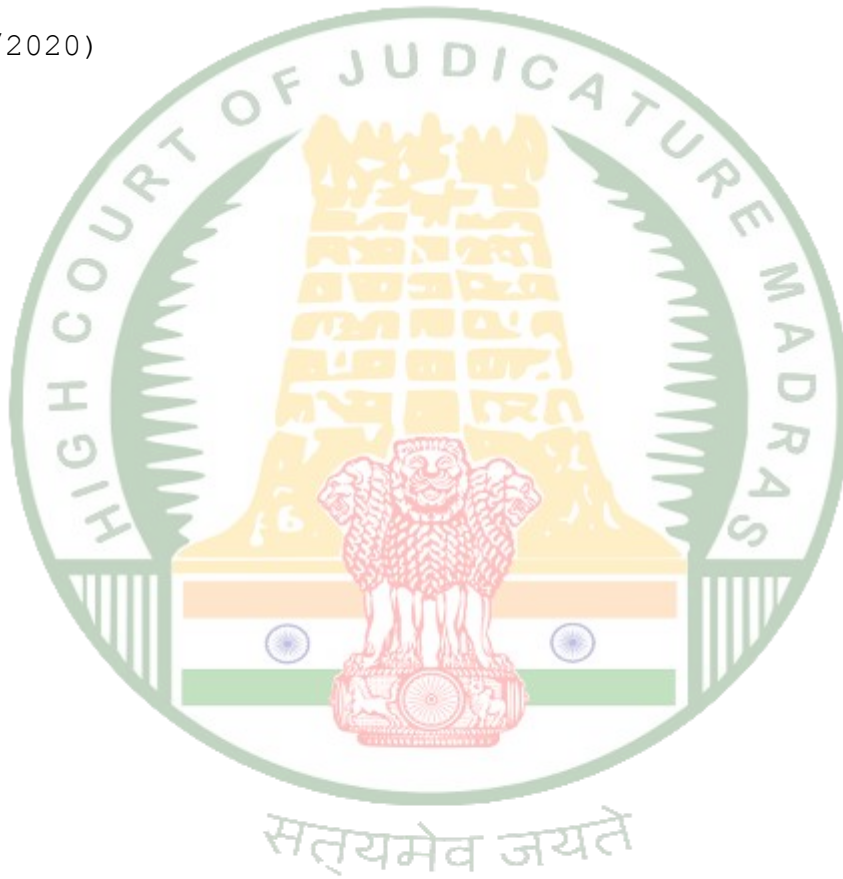
2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.N.M. Elumalai, Advocate SR.No.23112

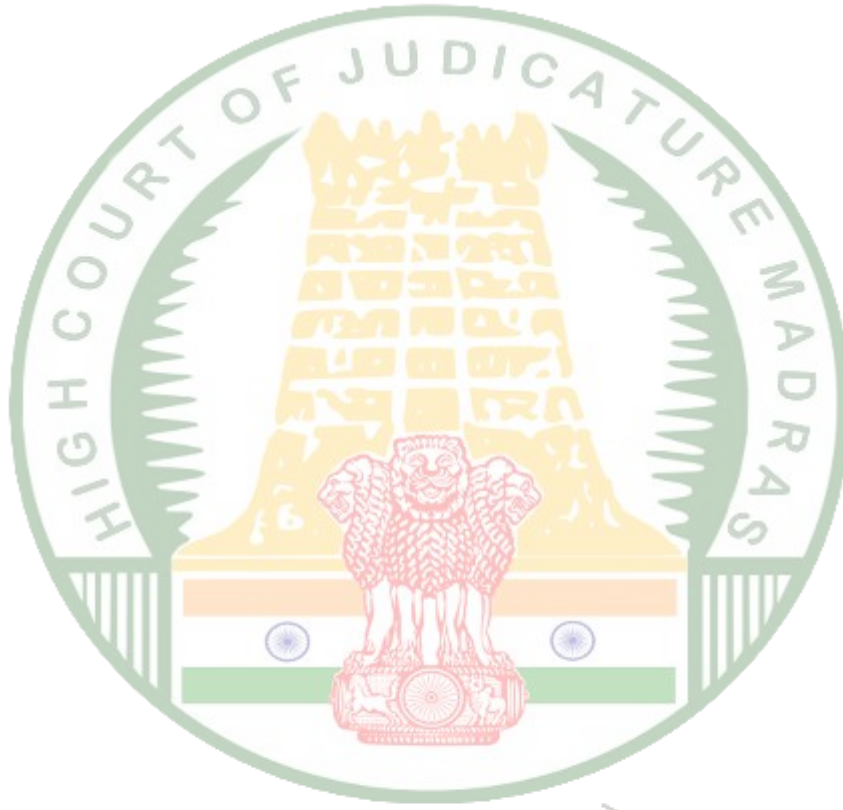
+1cc to Mr. Elveera Ravindran, Advocate SR.No.23337

C.M.A. No. 2002 of 2013

LN (CO)
GMY (18/08/2020)



WEB COPY



सत्यमेव जयते

WEB COPY