

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3017 of 2011

S.Vijayakumar

...Appellant/Appellant

Vs.

1. R.Chinnasamy

2. The Branch Manager,
Bajaj Allianz General Insurance Company,
Bagavathy Palace, 2nd Floor,
J-Block, No.13, 3rd Avenue,
Anna Nagar West,
Chennai.

...Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.06.2011 made in M.C.O.P.No.1060 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Dharmapuri.

For Appellant : Mr.V.Kumaravelan

For R2 : Mr.N.Somasundar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 20.06.2011 made in M.C.O.P.No.1060 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Dharmapuri.

2.The appellant is the claimant in M.C.O.P.No.1060 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Dharmapuri. He filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 18.03.2008.

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 1st respondent and directed the respondents 1 and 2, being the owner and insurer of the lorry respectively to pay a sum of Rs.2,08,549/- 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 fractures and multiple injuries all over the body. P.W.2/Doctor examined the appellant and certified that appellant suffered 30% disability and issued Ex.P10/disability certificate to that effect. The Tribunal without giving valid reason, reduced the same to 20% and awarded compensation only for 20% disability. The Tribunal ought to have awarded compensation for 30% disability. The appellant has taken treatment in the hospital as in-patient for more than three months but the Tribunal has not awarded any amount towards loss of income, future medical expenses and damages to clothes & articles. 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 2nd respondent-Insurance Company contended that the Tribunal reduced the percentage of disability to 20% on the ground that P.W.2/Doctor has not given continuous treatment to the appellant and the disability certificate issued by P.W.2/Doctor is on the higher side. Therefore, he is not entitled to compensation for 30% disability. The appellant has not proved that he lost his income during treatment period and hence, he is not entitled to any amount towards loss of income. The amounts awarded by the Tribunal under different heads are not meagre. 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 2nd respondent-Insurance Company and perused the entire materials on record.

8. From the award passed by the Tribunal, it is seen that the appellant sustained grievous injuries in his hip and he feels difficulty in standing, walking, sitting cross legged, squatting and to prove the same, the appellant examined P.W.2/Doctor. P.W.2/Doctor examined the appellant and certified that appellant suffered 30% disability and issued Ex.P10/disability certificate to that effect. The 2nd respondent-Insurance Company did not let in any contra evidence to disprove the contention of P.W.2/Doctor and Ex.P10/disability certificate. The Tribunal reduced the percentage of disability to 20% on the ground that P.W.2/Doctor has not given continuous treatment to the appellant and the disability certificate issued by him is on the higher side. The reason given by the Tribunal for reducing the percentage of disability is not correct. Therefore, the appellant is entitled to compensation for 30% disability. The accident occurred in the year 2008 and the Tribunal has awarded a sum of Rs.2,000/- per percentage of disability, which is proper. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.60,000/- [Rs.2,000/- X 30% of disability].

9. It is the contention of the appellant that at the time of accident he was aged 21 years and was working as Cleaner and also running a Beeda Stall and earning a sum of Rs.6,000/- per month. The appellant failed to prove the same and the Tribunal has not awarded any amount towards loss of income. Considering the age of the appellant, nature of work done by him and year of accident, a sum of Rs.6,000/- per month is fixed as notional income of the appellant. Due to the injuries sustained by him, he would not have attended his work at least for a period of four months. Therefore, the appellant is entitled to a sum of Rs.24,000/- [Rs.6,000/- X 4 months] towards loss of income. The contention of the learned counsel appearing for the appellant that the appellant has taken treatment as in-patient for more than three months is without merits. From the materials on record, it is seen that immediately after the accident, the appellant was taken to Star Hospital, Bangalore, where he took first aid treatment. As per Ex.P4/discharge summary, the appellant has taken treatment as in-patient at Sri Gokulam hospital, Salem for 25 days from 19.03.2008 to 12.04.2008 and the Tribunal has not awarded any amounts towards attendant charges and damages to clothes. Therefore, a sum of Rs.20,000/- and Rs.2,000/- are awarded towards attendant charges and damages to clothes respectively. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards extra nourishment, loss of amenities and transportation are meagre and the same are enhanced to Rs.20,000/-, Rs.15,000/- and Rs.7,500/- respectively. The appellant has not filed any document and proved that he requires further medical treatment. Hence, he is not entitled to any

amount towards future medical expenses. The amounts awarded by the Tribunal towards pain and sufferings, injuries, medical expenses and mental agony are just and reasonable and hence, the same are 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	40,000/-	60,000/-	Enhanced
2.	Pain and sufferings	10,000/-	10,000/-	Confirmed
3.	Injuries	30,000/-	30,000/-	Confirmed
4.	Mental agony	5,000/-	5,000/-	Confirmed
5.	Extra nourishment	2,000/-	20,000/-	Enhanced
6.	Transportation	2,000/-	7,500/-	Enhanced
7.	Loss of amenities	2,000/-	15,000/-	Enhanced
8.	Medical expenses	1,17,549/-	1,17,549/-	Confirmed
9.	Attendant charges	-	20,000/-	Granted
10.	Damages to clothes	-	2,000/-	Granted
11.	Loss of income	-	24,000/-	Granted
	Total	Rs.2,08,549/-	Rs.3,11,049/-	enhanced by Rs.1,02,500/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,08,549/- is hereby enhanced to Rs.3,11,049/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 and 2 are 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, to the credit of M.C.O.P.No.1060 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Dharmapuri. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant is directed to pay the necessary Court fee, if any

on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

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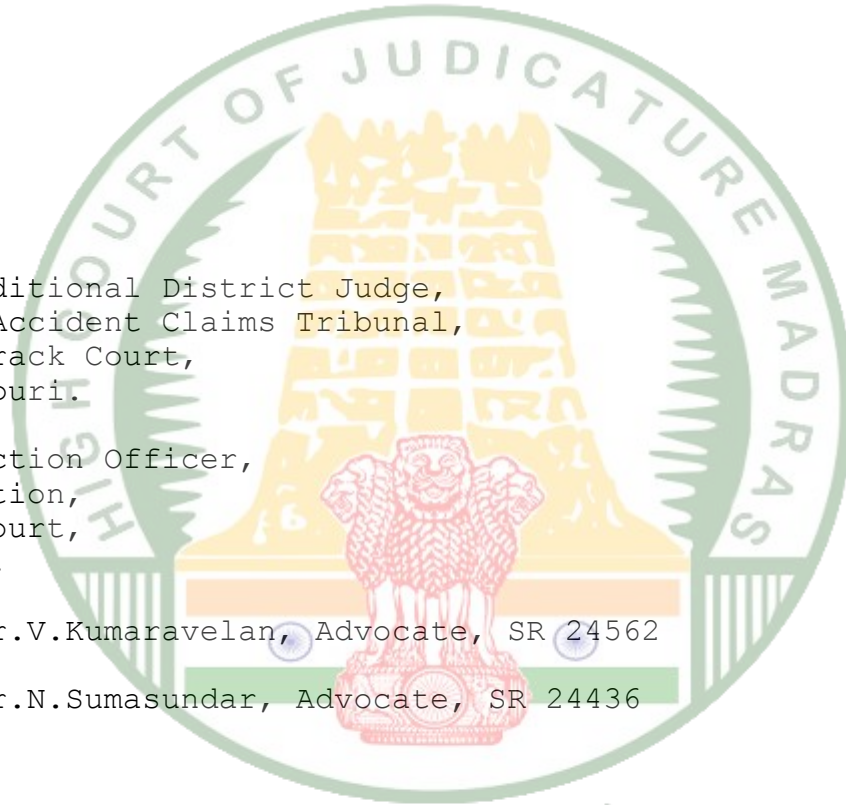
To

1. The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court,
Dharmapuri.

2. The Section Officer,
VR Section,
High Court,
Madras.

+1CC to Mr.V.Kumaravelan, Advocate, SR 24562

+1CC to Mr.N.Sumasundar, Advocate, SR 24436



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SVI (CO)

PSI 19/12/2020

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