

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.M.A. No. 2058 of 2013

T. Sudhakar

.. Appellant

Vs.

1.K. Shankar

2.Reliance General Insurance Co. Ltd.,  
Haddows Road, Nungambakkam,  
Chennai.

.. Respondents

(R1 remained exparte before the Tribunal  
and hence, notice is dispensed with.)

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 23.07.2012, made in M.C.O.P. No. 1306 of 2011, on the file of the IV Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. K. Varadhakamaraj

For Respondents : No appearance (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 23.07.2012, made in M.C.O.P. No. 1306 of 2011, on the file of the IV Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-claimant filed M.C.O.P. No. 1306 of 2011, on the file of the IV Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 22.01.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 1<sup>st</sup> respondent, driver-cum-owner of the Auto rickshaw and directed the 2<sup>nd</sup> respondent, as insurer of the Vehicle to pay a sum of Rs. 2,31,200/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 23.07.2012, made in M.C.O.P. No. 1306 of 2011, the appellant has come out with the present appeal.

5. Though the learned counsel appearing for the appellant raised various grounds with regard to enhancement of the compensation for loss of earning capacity and loss of income, at the time of arguments, he has restricted his arguments with regard to enhancement of compensation awarded towards permanent disability, attendant charges, damages to clothes, extra nourishment and transportation charges and contended that the appellant took treatment as in-patient in Government General Hospital from 22.01.2011 to 05.02.2011 and again in Egmore Eye Hospital from 25.02.2011 to 14.03.2011, for which he was attended by his family members. The amounts awarded by the Tribunal towards attendant charges is meagre. In the accident, the appellant sustained 35% disability, as assessed by the P.W.2 – Doctor. The Tribunal reduced the same to 25% and awarded only meagre sum of Rs.2,000/- per percentage

towards disability. The accident is of the year 2011. The Tribunal ought to have awarded compensation towards disability at the rate of Rs.3,000/- per percentage of disability. The Tribunal has not awarded any amount towards medical expenses and loss of amenities. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6. Though notice has been served on the 2<sup>nd</sup> respondent-Insurance Company and their name is printed in the cause list, there is no representation for them either in person or through counsel.

7. Heard the 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 several head injuries, fracture, lost left eye vision partially and multiple injuries all over the body. To prove the same, he has examined

P.W.2- Doctor and marked Disability Certificate issued by him as Ex.P7. The Tribunal reduced the percentage of disability assessed by P.W.2 Doctor from 35% to 25%, on the ground that the assessment of P.W.2- Doctor is on the higher side and awarded a sum of Rs.2,000/- per percentage towards 25% disability. Considering the nature of injuries, there is no error in the award fixing percentage of disability. The accident is of the year 2011 and the amount awarded per percentage of disability is meagre. Hence, the amounts awarded towards disability is enhanced to Rs.75,000/- (Rs.2,000/- x 25%), at the rate of Rs.3,000/- per percentage for 25% disability.

9.The appellant also examined P.W.3-Doctor to depose about his loss of vision in left eye partially and marked the Disability Certificate issued by him as Ex.P8. From the materials on record, it is seen that the Tribunal has not awarded any amount towards loss of amenities. Considering the partial disability in left vision suffered by the appellant, a sum of Rs.10,000/- is awarded towards loss of amenities. For the

injuries sustained in the accident, the appellant has taken treatment as in-patient in Government General Hospital from 22.01.2011 to 05.02.2011 and again at Egmore Eye Hospital from 25.02.2011 to 14.03.2011. The amounts awarded by the Tribunal towards attendant charges, transportation, extra nourishment and damages to clothes are meagre and hence, the same are enhanced to Rs.20,000/-, Rs.5,000/-, Rs.15,000/- and Rs.2,000/- respectively. The amounts awarded by the Tribunal under other heads 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.   | Loss of income           | 18,000/-                        | 18,000/-                          | Confirmed                              |
| 2.   | Transportation           | 3,000/-                         | 5,000/-                           | Enhanced                               |
| 3.   | Extra nourishment        | 7,000/-                         | 15,000/-                          | Enhanced                               |
| 4.   | Damages to clothes       | 1,000/-                         | 2,000/-                           | Enhanced                               |
| 5.   | Pain and suffering       | 45,000/-                        | 45,000/-                          | Confirmed                              |
| 6.   | Permanent disability     | 50,000/-                        | 75,000/-                          | Enhanced                               |
| 7.   | Loss of amenities        | -                               | 10,000/-                          | Granted                                |
| 8.   | Loss of earning capacity | 97,200/-                        | 97,200/-                          | Confirmed                              |

|    |                   |                   |                   |                                    |
|----|-------------------|-------------------|-------------------|------------------------------------|
| 9. | Attendant charges | 10,000/-          | 20,000/-          | Enhanced                           |
|    | <b>Total</b>      | <b>2,31,200/-</b> | <b>2,87,200/-</b> | <b>Enhanced by<br/>Rs.56,000/-</b> |

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.2,31,200/- is enhanced to Rs.2,87,200/- along with interest and costs. 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, 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. 1306 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.56,000/-. No costs.

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Index : Yes / No

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**V.M.VELUMANI, J.,**

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To

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

2.The IV Judge,  
Small Causes Court,  
(Motor Accident Claims Tribunal),  
Chennai.

C.M.A. No. 2058 of 2013



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