

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.555 of 2020

B.Udayakumar .. Appellant /Petitioner

Vs.

1.Sampath

2.United India Insurance Co. Ltd.

Motor Third Party Claim Cell

No.135, Greams Road

V floor, Chennai-6.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.07.2019 made in M.C.O.P.No.985 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mr.P.Sankara Narayanan

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 10.07.2019 made in M.C.O.P.No.985 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.985 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub Court

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No.I, Small Causes Court, Chennai. He filed the 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 04.12.2016.

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 Bolero car belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.97,000/- 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 the appellant was aged 58 years at the time of accident and was earning a sum of Rs.30,000/- per month by working as a carpenter in Indian Armed Force, Civilian, Avadi, Chennai. The appellant marked employee ID card, payslip and leave certificate as Exs.P8 to P10 to prove the same. The Tribunal failed to award any compensation towards loss of income. Due to the accident, the appellant suffered disc prolapse at L4-L5 level compressing the left L5 nerve root. He examined the Doctor as P.W.2, who has assessed the disability of the appellant as 20%. The Tribunal erred in reducing the disability to 10% and awarded only a meagre sum of Rs.30,000/- towards disability at the rate of Rs.3,000/- per percentage of disability. Due to the injuries, the appellant could not do the work as he was doing earlier and the Tribunal ought to have awarded compensation for 100% disability. The Tribunal has not awarded any compensation towards attendant charges, loss of amenities and future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.The learned counsel appearing for the 2nd respondent/Insurance Company made his submissions supporting the award passed by the Tribunal 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 all the materials available on record.

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8. It is the contention of the appellant that he suffered disc prolapse at L4-L5 level compressing the left L5 nerve root. The appellant examined Dr.K.J.Mathiazhagan as P.W.2, who has assessed the disability of the appellant as 20% and marked the disability certificate as Ex.P18 to prove the injuries. The Tribunal reduced the disability of the appellant to 10% on the ground that P.W.2 is not the Doctor, who treated the appellant, the appellant has taken only conservative treatment and awarded a sum of Rs.30,000/- (Rs.3,000/- X 10%) towards disability at the rate of Rs.3,000/- per percentage of disability. The appellant has not proved that he suffered functional disability and there is loss of earning capacity. Therefore, the percentage method adopted by the Tribunal is proper. The respondents did not let in any contra evidence to disprove the disability assessed by P.W.2/Doctor and the disability certificate marked as Ex.P18. Therefore, the reason assigned by the Tribunal for reducing the percentage of disability assessed by P.W.2/Doctor is not correct. The appellant is entitled to compensation for 20% disability as there is no contra evidence. This Court by judgment dated 09.01.2020 made in C.M.A.No.4870 of 2020 in the case of M/s.IFFCO TOKIO General Insurance Company Limited vs. Venkatesh and another), fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2016. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,00,000/- (Rs.5,000/- X 20%).

8(i).The appellant has contended that he was earning a sum of Rs.30,000/- per month by working as a carpenter in Indian Armed Force, Civilian, Avadi, Chennai. The appellant marked employee ID card, payslip and leave certificate as Exs.P8 to P10 to prove the same. The Tribunal considering the same, fixed a sum of Rs.15,000/- as monthly income of the appellant. The Tribunal considering Ex.P10/leave certificate, held that the salary of the appellant from his concern is earned leave salary. In the absence of any document to prove the loss of pay, the Tribunal has not awarded any compensation towards loss of earnings during treatment period. But the Tribunal awarded a sum of Rs.20,000/- towards future prospects. Therefore, the said finding of the Tribunal does not warrant any interference by this Court. The appellant has taken treatment only as out-patient and therefore, he is not entitled to any compensation towards attendant charges. The Tribunal has not awarded any

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compensation towards loss of amenities and hence, a sum of Rs.10,000/- is awarded towards loss of amenities. A sum of Rs.3,000/- awarded by the Tribunal towards transportation is meagre and the same is hereby enhanced to Rs.5,000/-. The appellant has not produced any document to prove that he is still taking treatment and therefore, he is not entitled to any compensation towards future medical expenses. 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 or reduced
1.	Disability	30,000	1,00,000	Enhanced
2.	Pain & suffering	20,000	20,000	Confirmed
3.	Extra nourishment	10,000	10,000	Confirmed
4.	Transportation	3,000	5,000	Enhanced
5.	Medical expenses	13,974	13,974	Confirmed
6.	Loss of future prospects	20,000	20,000	Confirmed
7.	Loss of amenities	-	10,000	Granted
	Total	96,974 rounded off to 97,000	1,78,974 rounded off to 1,79,000	Enhanced by Rs.82,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.97,000/- is hereby enhanced to Rs.1,79,000/- 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 compensation. The 2nd 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 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-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Subordinate Judge I
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

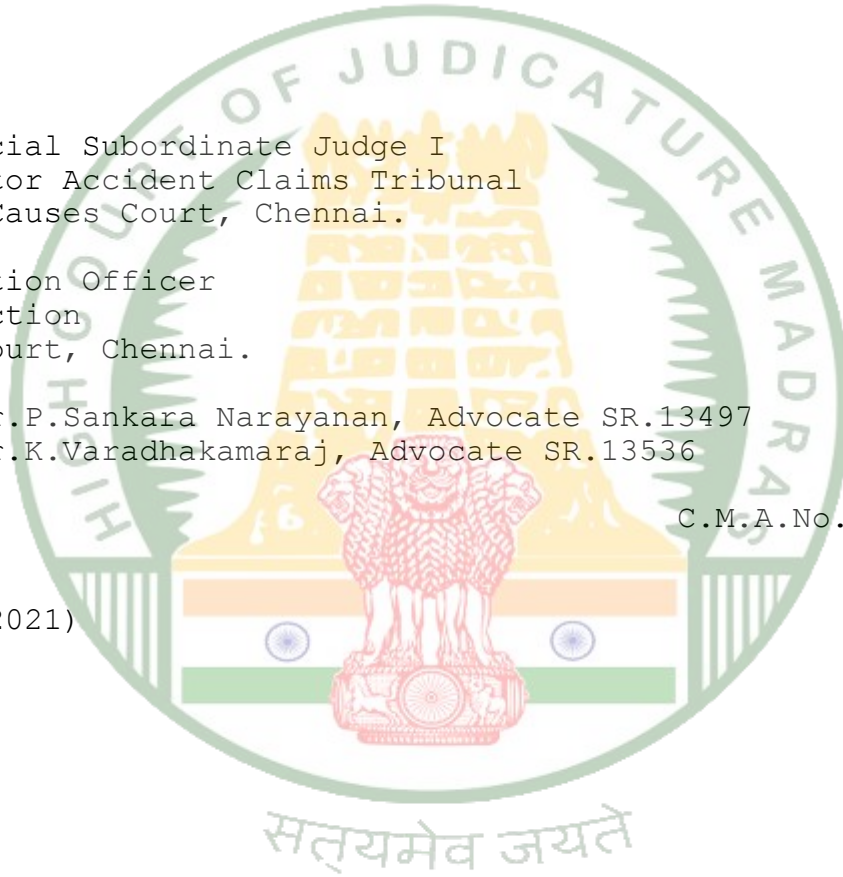
2.The Section Officer
V.R.Section
High Court, Chennai.

+1cc to Mr.P.Sankara Narayanan, Advocate SR.13497

+1cc to Mr.K.Varadhakamaraj, Advocate SR.13536

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