

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2302 of 2015

V.Selvaraj

.. Appellant/Petitioner

Vs.

1.M.Janaki Raman

2.Royal Sundaram Alliance Insurance Co. Ltd.
Club House Road
Chennai-2.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.08.2014 made in M.C.O.P.No.684 of 2013 on the file of Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai.

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

For R2 : Mr.K.Vinod for
Ms.Elveera Ravindran

R1 : Exparte

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 28.08.2014 made in M.C.O.P.No.684 of 2013 on the file of Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai.

2.The appellant is claimant in M.C.O.P.No.684 of 2013 on the file of Motor Accident Claims Tribunal, Small Causes Court No.III, 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 06.12.2012.

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 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.2,92,135/- as compensation to the appellant at the first instance and recover the same from the 1st respondent, owner of the car, as the driver of the car did not possess driving license at the time of accident.

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 51 years at the time of accident and was earning a sum of Rs.18,837/- per month by working as a salesman in Khadi Gramodyog Bhavan. The appellant marked salary slip and certificate issued by the employer as Exs.P6 & P7 respectively to prove his avocation and income. The Tribunal failed to award any compensation towards loss of income. The appellant suffered fracture of tibia and fibula 1/3rd left and restriction of ankle movements. He has taken treatment as in-patient in the hospital from 06.12.2012 to 09.12.2012 and underwent inter-locking of nailing at left tibia. The appellant examined the Doctor as P.W.2, who has assessed the disability of the appellant as 55% and marked Ex.P10/disability certificate to prove the injuries. The Tribunal without considering the same, reduced the disability to 40% and awarded a meagre sum of Rs.72,000/- (Rs.1,800/- X 40%) towards disability at the rate of Rs.1,800/- per percentage of disability. The Tribunal ought to have adopted multiplier method and awarded compensation separately towards loss of earning capacity and permanent disability. The Tribunal has not awarded any compensation towards attendant charges 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.

8. It is the contention of the appellant that he suffered fracture of tibia and fibula 1/3rd left and restriction of ankle movements. The appellant examined Dr.Thiagarajan as P.W.2, who has assessed the disability of the appellant as 55% and marked Ex.P10/disability certificate to prove the injuries.

The Tribunal reduced the disability of the appellant to 40% on the ground that P.W.2 is not the Doctor, who treated the appellant and the disability assessed by the Doctor is on the higher side and awarded a sum of Rs.72,000/- (Rs.1,800/- X 40%) towards 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.P10. 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 55% disability as there is no contra evidence. The accident is of the year 2012 and a sum of Rs.1,800/- awarded by the Tribunal per percentage of disability is meagre. Hence, a sum of Rs.3,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,65,000/- (Rs.3,000/- X 55%).

8(i).The appellant has contended that he was earning a sum of Rs.18,837/- per month by working as a salesman in Khadi Gramodyog Bhavan. The appellant marked salary slip and certificate issued by the employer as Exs.P6 & P7 respectively to prove his avocation and income. As per Ex.P7, the appellant was on leave from 07.12.2012 to 02.02.2013. The Tribunal rejected the same on the ground that salary certificate for the accident period has not been marked and there is no mention about the payment of salary for the treatment period given in Ex.P7 and has not awarded any compensation towards loss of income. The reason given by the Tribunal is proper and the same is not interfered with.

8(ii). According to the appellant, he has taken treatment as in-patient in the hospital from 06.12.2012 to 09.12.2012 and underwent inter-locking of nailing at left tibia. The Tribunal has not awarded any compensation towards attendant charges. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.7,500/- is awarded towards attendant charges. The sum of Rs.7,000/-, Rs.7,000/-, Rs.500/- and Rs.10,000/- awarded by the Tribunal towards transportation, extra nourishment, damage to clothes and loss of amenities are meagre and the same are hereby enhanced to Rs.10,000/-, Rs.10,000/-, Rs.2,000/- and Rs.20,000/- respectively. 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.	Transportation	7,000	10,000	Enhanced
2.	Extra nourishment	7,000	10,000	Enhanced
3.	Damage to clothes	500	2,000	Enhanced
4.	Medical expenses	1,65,635	1,65,635	Confirmed
5.	Loss of amenities	10,000	20,000	Enhanced
6.	Pain and suffering	30,000	30,000	Confirmed
7.	Disability	72,000	1,65,000	Enhanced
8.	Attendant charges	-	7,500	Granted
	Total	2,92,135	4,10,135	Enhanced by Rs.1,18,000 /-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,92,135/- is hereby enhanced to Rs.4,10,135/- 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 at the first instance and recover the same from the 1st respondent. 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.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

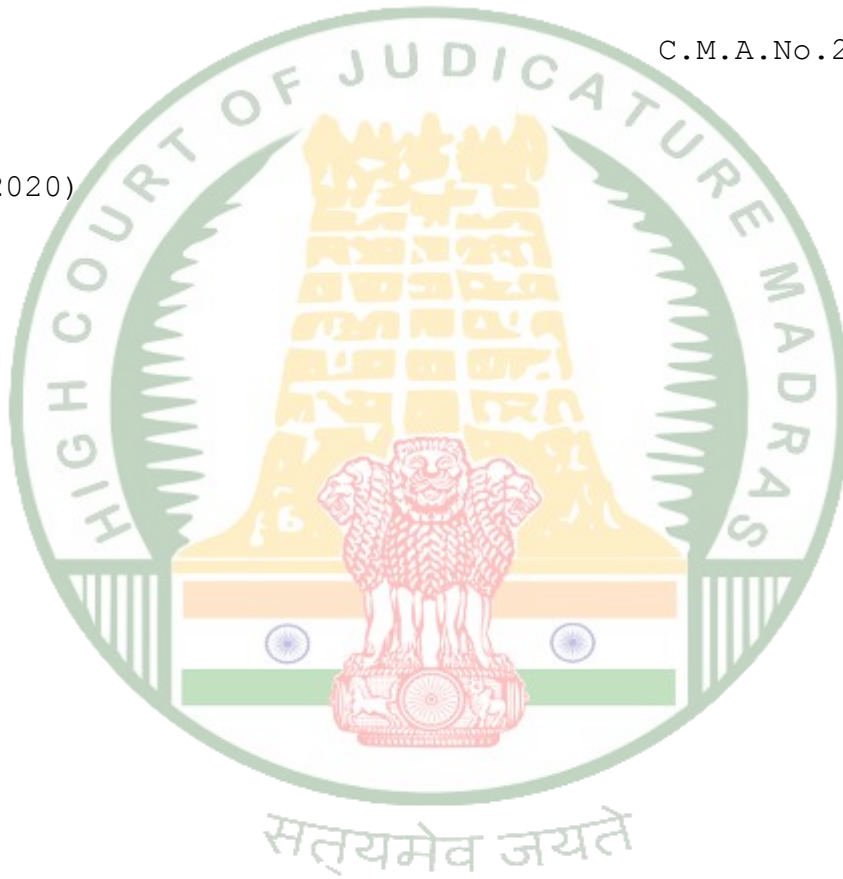
2.The Section Officer
V.R.Section
High Court, Chennai.

+1 CC to Mrs.M. Malar, Advocate sr 15437.

+1 CC to Mr.Elveera Ravindran, Advocate sr 15254.

C.M.A.No.2302 of 2015

KK(CO)
SP(17/09/2020)



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