

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1403 of 2016

Perumal .. Appellant/ Petitioner

Vs.

1.Srinivasalu

(Since R1 remained ex-parte before
Tribunal his presence may be dispensed with)

2.Reliance General Insurance Company Limited,
Reliance House,
No.6, 6th Floor, Haddows Road,
Chennai-6.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.09.2013 made in M.C.O.P.No.1274 of 2010 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : M/s.A.Subadra
For R2 : Mr.S.Arun Kumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 03.09.2013 made in M.C.O.P.No.1274 of 2010 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.1274 of 2010 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. He filed the above claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.02.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the Tipper Lorry belonging to the first respondent and directed the second respondent/Insurance Company to pay a sum of Rs.5,21,085/- as compensation to the appellant/claimant.

4. Not being satisfied with the amounts awarded by the Tribunal, the appellant/claimant has come out with the present appeal for enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the Tribunal, without any reason, reduced the percentage of disability from 60% as certified by P.W.4/Doctor to 25%. The appellant has taken treatment in two different hospitals as in-patient from 10.02.2010 to 12.02.2010 and from 13.02.2010 to 17.02.2010. The Tribunal has not awarded any amount towards attendant charges. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per Contra, Mr. S. Arun Kumar, learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal rightly fixed 25% of disability on the ground that 60% of disability assessed by P.W.2/Doctor is on the higher side and awarded a sum of Rs.3,03,810/- towards loss of earning capacity due to disability suffered by the appellant/claimant. The amounts awarded by the Tribunal under different heads are not meagre 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 second respondent and perused the materials available on record.

8. From the materials on record, it is seen that P.W.4/Doctor assessed and certified the disability sustained by the claimant as 60%. The Tribunal, considering the evidence of P.W.2/N. Kasi (Medical Records Technician), P.W.3/S. Sankara Narayana (General Manager in Rotary Central Margaret Sidney Hospital) and Ex.P11/disability certificate and based on the oral and documentary evidence, assessed the disability as 25% and applying multiplier method awarded compensation. P.W.5/Mr. Peter, H.R., in ISS SDB Security Services Private Limited was examined and he deposed that the appellant/claimant was working in his company as Security Guard from 24.08.2009 and was drawing Rs.7,790/- per month and he has marked Exs.P13 and P15, the authorization letters issued to him. Ex.P16 is copy of the identity card of P.W.5 and Ex.P14 and Ex.P17 are pay slips of the appellant for the month of September 2009, in which the gross income is mentioned as Rs.7,790/-. Hence, the Tribunal fixed the same as notional income and applying multiplier '13', since the claimant was aged 46 years, awarded a sum of Rs.3,03,810/- (Rs.7,790/- X 12 X 13 X 25%) as compensation towards loss of earning capacity which is just compensation. The appellant has taken treatment in two different hospitals as in-patient from 10.02.2010 to 12.02.2010 and from 13.02.2010 to

17.02.2010. The Tribunal has not awarded any amount towards attendant charges. Therefore, a sum of Rs.5,000/- is awarded towards attendant charges. The amounts awarded by the Tribunal under 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.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earnings	15,580/-	15,580/-	confirmed
2.	Transportation	10,000/-	10,000/-	confirmed
3.	Extra nourishment	10,000/-	10,000/-	confirmed
4.	Damage to clothes	1,000/-	1,000/-	confirmed
5.	Medical expenses	30,695/-	30,695/-	confirmed
6.	Mental agony & shortening of life expectancy	50,000/-	50,000/-	confirmed
7.	Loss of amenities & discomforts of life	50,000/-	50,000/-	confirmed
8.	Pain & suffering	50,000/-	50,000/-	confirmed
9.	Loss of income	3,03,810/-	3,03,810/-	confirmed
10.	Attendant charges	-	5,000/-	granted
	Total	Rs.5,21,085/-	Rs.5,26,085/-	enhanced by Rs.5,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,21,085/- is hereby enhanced to Rs.5,26,085/-. The appellant is entitled to interest at the rate of 7.5% per annum for the enhanced award amount now determined by this Court. The second respondent-Insurance Company is directed to deposit the enhanced award amount along with interest and costs now determined by

this Court, 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)

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Sub Assistant Registrar

gbi
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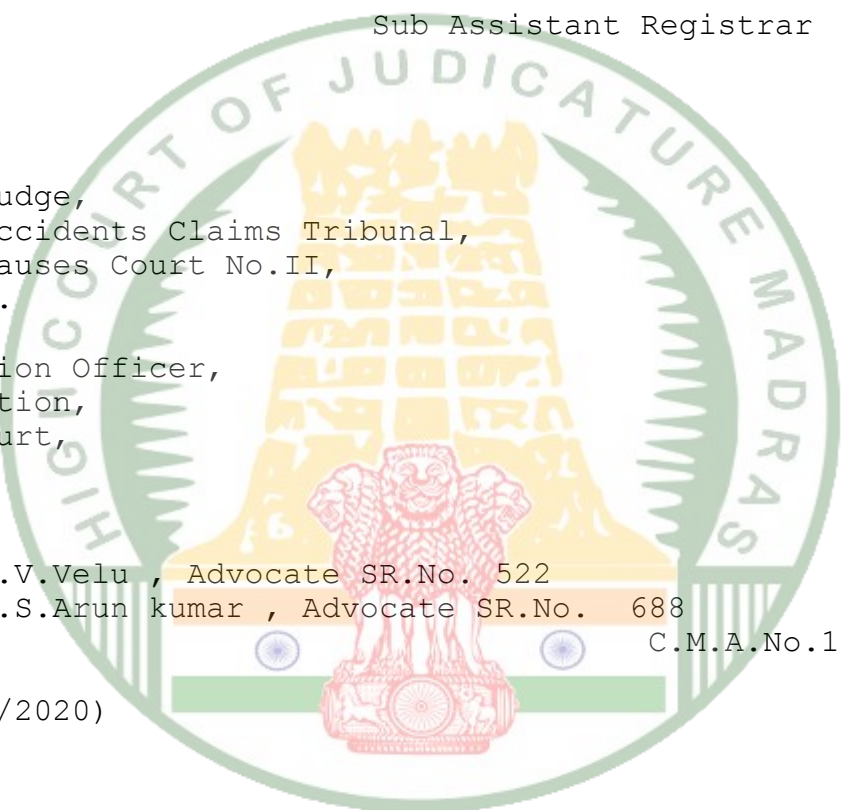
1.The II Judge,
Motor Accidents Claims Tribunal,
Small Causes Court No.II,
Chennai.

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

+1cc to Mr.V.Velu , Advocate SR.No. 522
+1cc to Mr.S.Arun kumar , Advocate SR.No. 688

C.M.A.No.1403 of 2016

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A.SK(27/08/2020)

The seal of the High Court of Judicature Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital in front of it. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a green circle around the central image. Below the seal, the motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

सत्यमेव जयते

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