

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3453 of 2011

D.Sigamani

.. Appellant/Petitioner

Vs.

1.R.Basheerudeen

(R1 remained exparte before the Tribunal)

2.The United India Insurance Company Ltd.

No.38, Anna salai,

Chennai-600 002.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.12.2008 made in M.C.O.P.No.485 of 2007 on the file of Motor Accident Claims Tribunal, Small Causes Court No.VI, Chennai.

For Appellant : Mr.F.Terry Chellaraja

For R2 : Mr.C.Paranthaman

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 19.12.2008 made in M.C.O.P.No.485 of 2007 on the file of Motor Accident Claims Tribunal, Small Causes Court No.VI, Chennai.

2.The appellant is claimant in M.C.O.P.No.485 of 2007 on the file of Motor Accident Claims Tribunal, Small Causes Court No.VI, Chennai. He filed the said 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 16.09.2006.

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 bus belonging to the 1st respondent and directed both the 1st respondent as well as the 2nd respondent/Insurance Company being insurer of the said bus to jointly and severally pay a sum of Rs.1,84,750/- 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 earning a sum of Rs.20,000/- per month by working as a noon meal organiser. The Tribunal without considering the same, fixed only a meagre sum of Rs.2,500/- as monthly income of the appellant. In the accident, the appellant suffered fracture of right ankle, cuneiform bone and underwent three surgeries. The appellant examined the doctor as P.W.3, who has assessed the disability of the appellant as 45% and marked the disability certificate as Ex.P13. The Tribunal awarded only a meagre sum of Rs.45,000/- towards disability at the rate of Rs.1,000/- per percentage of disability. The appellant has taken treatment as in-patient in the hospital from 16.09.2006 to 28.10.2006 on three different spells. The Tribunal has not awarded any compensation towards attendant charges, future medical expenses, damage to clothes and loss of amenities. 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 after considering all the materials available on record, awarded just compensation. 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 all the materials available on record.

8. It is the contention of the appellant that he suffered fracture of right ankle, cuneiform bone and underwent three surgeries. The appellant examined the doctor as P.W.3, who has assessed the disability of the appellant as 45% and marked the disability certificate as Ex.P13 to prove the injuries. The Tribunal accepting the same, fixed the disability of the appellant as 45% and awarded a sum of Rs.45,000/- (Rs.1,000/- X 45%) towards disability at the rate of Rs.1,000/- per percentage of disability. The accident is of the year 2006 and the amount awarded by the Tribunal per percentage of disability is meagre. Hence, a sum of Rs.2,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.90,000/- (Rs.2,000/- X 45%).

8(i). The appellant has contended that he was earning a sum of Rs.20,000/- per month by working as a noon meal organiser. To

substantiate the said contention, the appellant marked the income certificate as Ex.P11. But the appellant in his cross-examination admitted that he was earning a sum of Rs.2,600/- per month by working as a noon meal organiser. The Tribunal considering the same, fixed a sum of Rs.2,500/- as monthly income of the appellant and awarded a sum of Rs.12,500/- (Rs.2,500/- X 5) towards loss of income for five months. In view of the admission of appellant in his cross-examination, the income of the appellant is fixed as Rs.2,600/- per month. Thus the amount awarded by the Tribunal towards loss of income is enhanced to Rs.13,000/- (Rs.2,600/- X 5).

8(ii).According to the appellant, he has taken treatment as in-patient in the hospital, from 16.09.2006 to 20.09.2006, 09.10.2006 & 10.10.2006 and subsequently, from 23.10.2006 to 28.10.2006 and underwent three surgeries. To prove the same, the appellant marked the discharge summaries as Exs.P2 to P4. The Tribunal has not awarded any compensation towards attendant charges and loss of amenities. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.10,000/- each is awarded towards attendant charges and loss of amenities.

8(iii).The appellant claimed that he has spent a sum of Rs.12,350/- towards transportation and marked the travel bills as Ex.P8. The Tribunal awarded a sum of Rs.8,000/- towards transportation on the ground that there is no mention about the departure and destination places in the travel bills. The said reason is not proper. Therefore, the appellant is entitled to a sum of Rs.12,350/- towards transportation. The sum of Rs.4,500/- and Rs.10,000/- awarded by the Tribunal towards extra nourishment & damage to clothes and pain & suffering are meagre. Considering nature of injuries, period of treatment taken and disability suffered by the appellant, the amounts awarded for extra nourishment & damage to clothes and pain & suffering are hereby enhanced to Rs.10,000/- and Rs.15,000/- 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.	Loss of income	12,500	13,000	Enhanced

2.	Transportation	8,000	12,350	Enhanced
3.	Extra nourishment & damage to clothes	4,500	10,000	Enhanced
4.	Medical expenses	1,04,750	1,04,750	Confirmed
5.	Pain and suffering	10,000	15,000	Enhanced
6.	Permanent disability	45,000	90,000	Enhanced
7.	Attendant charges	-	10,000	Granted
8.	Loss of amenities	-	10,000	Granted
	Total	1,84,750	2,65,100	Enhanced by Rs.80,350/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,84,750/- is hereby enhanced to Rs.2,65,100/- 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. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.80,350/- enhanced by this Court as per the order of this Court dated 03.11.2011 in M.P.No.1 of 2011 in C.M.A.SR.No.58518 of 2011. Both the respondents are jointly and severally 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 VI)

//True Copy//

Sub Assistant Registrar

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To

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

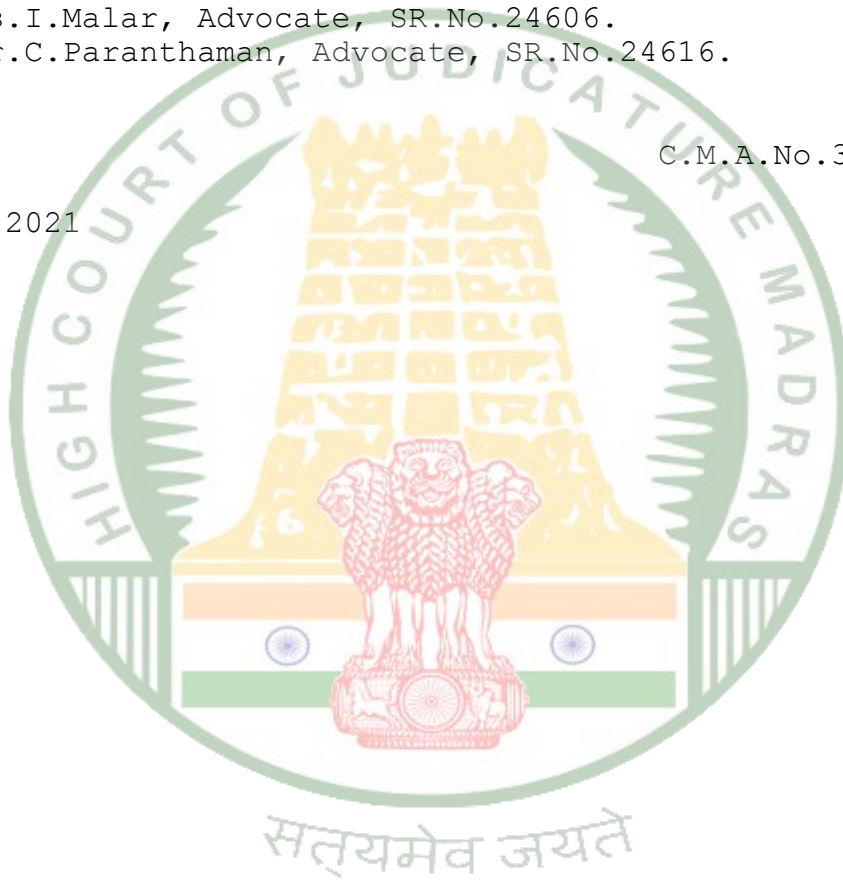
2. The Section Officer
V.R.Section
High Court, Chennai.

+1cc to Ms.I.Malar, Advocate, SR.No.24606.

+1cc to Mr.C.Paranthaman, Advocate, SR.No.24616.

C.M.A.No.3453 of 2011

KJ (CO)
CSR 22.04.2021



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