

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2903 of 2012

S.Dhandapani

.. Appellant/Claimant

Vs.

1.M.Mohan

Remained ex-parte before the Trial Court)

2.M/s.United India Insurance Co.Ltd.,

C/o.Other Division Cases,

A.R.Complex, II Floor

No.1090, Poonamallee High Road,

Chennai-600 084.

3.The Managing Director,

Tamilnadu State Transport Corporation Limited,

Kumbakonam.

4.N.Bharath

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 01.03.2012 made in M.C.O.P.No.3977 of 2008 on the file of Motor Accidents Claims Tribunal, Additional District Court, II Fast Track Court, Chennai.

For Appellant : Mr.T.G.Balachandran

For R2 : Mr.J.Chandran

RR1, 3 & 4 : Exparte

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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 01.03.2012 made in M.C.O.P.No.3977 of 2008 on the file of Motor Accidents Claims Tribunal, Additional District Court, II Fast Track Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.3977 of 2008 on the file of Motor Accidents Claims Tribunal, Additional District Court, II Fast Track Court, Chennai. He filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.07.2008.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent and directed the respondents 1 and 2, being the owner and insurer of the lorry jointly and severally to pay a sum of Rs.2,85,000/- 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 in the accident, the appellant sustained fractures of both femur bones. P.W.2/Doctor assessed the disability of the appellant at 65%, but the Tribunal reduced the same to 25% without giving any valid reason. The appellant was working as a Painter and Carpenter and was earning a sum of Rs.10,000/- per month. But, the Tribunal fixed a meagre sum of Rs.4,500/- per month as notional income of the appellant and awarded compensation. The appellant sustained fracture of both femurs and the same was malunited and plates and screws were fixed. The appellant has taken treatment in the Government General Hospital, Chennai for 45 days and the Tribunal has not awarded any amount towards loss of amenities and extra nourishment. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, Mr.J.Chandran, learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal reduced the percentage of disability from 65% to 25% on the ground that assessment of disability by P.W.2/Doctor is on the higher side. The appellant has not produced any material evidence to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the appellant and adopted multiplier method for awarding compensation towards 25% disability, which is excessive. Therefore, the appellant is not entitled to any amount towards loss of amenities and extra nourishment. 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 2nd respondent and perused the materials available on record.

8. It is the contention of the appellant that he suffered fracture of both right and left femur and the same were malunited and plates and screws were fixed. P.W.2/Doctor has assessed the disability of the appellant at 65% and the Tribunal reduced the percentage of disability to 25% holding that assessment of P.W.2/Doctor appears to be very high and the assessment is not in respect of the whole body and awarded compensation towards 25% disability by adopting multiplier method. The 2nd respondent-Insurance Company has not produced any contra evidence to disprove the contention of P.W.2 and Ex.P7/disability certificate. Therefore, considering the nature of injuries and deposition of P.W.2/Doctor, the appellant is entitled to compensation for 40% disability. The appellant has contended that he was aged 28 years and was working as a Painter and Carpenter and was earning a sum of Rs.10,000/- per month. He failed to substantiate the said contention. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the appellant. The accident is of the year 2008 and the notional income fixed by the Tribunal is meagre. Considering the age of the appellant and year of accident, a sum of Rs.6,000/- per month is fixed as notional income of the appellant. In view of the above, the compensation awarded by the Tribunal towards disability is modified to Rs.4,89,600/- (6,000 X 12 X 17 X 40/100).

9. From the award of the Tribunal, it is seen that the appellant has taken treatment in the Government General Hospital, Chennai, as in-patient for one and half month. The sum of Rs.15,500/- awarded by the Tribunal towards medical expenses and attendant charges altogether is meagre and the same are modified as Rs.15,500/- towards medical expenses and Rs.10,000/- towards attendant charges. The Tribunal has not awarded any amount towards loss of amenities and extra nourishment and therefore, the appellant is entitled to a sum of Rs.10,000/- each. Considering the nature of injuries sustained by the appellant, a meagre sum of Rs.20,000/- awarded by the Tribunal towards pain and suffering is enhanced to Rs.30,000/-. The amounts awarded by the Tribunal under other heads are just and reasonable and 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	2,29,500	4,89,600	Enhanced
2.	Pain and suffering	20,000	30,000	Enhanced
3.	Medical expenses & attendant charges	15,500	15,500	Confirmed
			10,000	Granted
4.	Loss of amenities	-	10,000	Granted
5.	Extra nourishment	-	10,000	Granted
6.	Loss of income	20,000	20,000	Confirmed
	Total	Rs.2,85,000/-	Rs.5,85,100/-	Enhanced by Rs.3,00,100/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,85,000/- is hereby enhanced to Rs.5,85,100/- 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 the necessary Court fee, if any, on the enhanced amount of compensation. The respondents 1 and 2, being the owner and insurer of the lorry 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 to the credit of M.C.O.P.No.3977 of 2008 on the file of Motor Accidents Claims Tribunal, II Fast Track Court, Chennai. 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

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Sub Assistant Registrar

gbi/krk

To

1.The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.II,
Chennai.

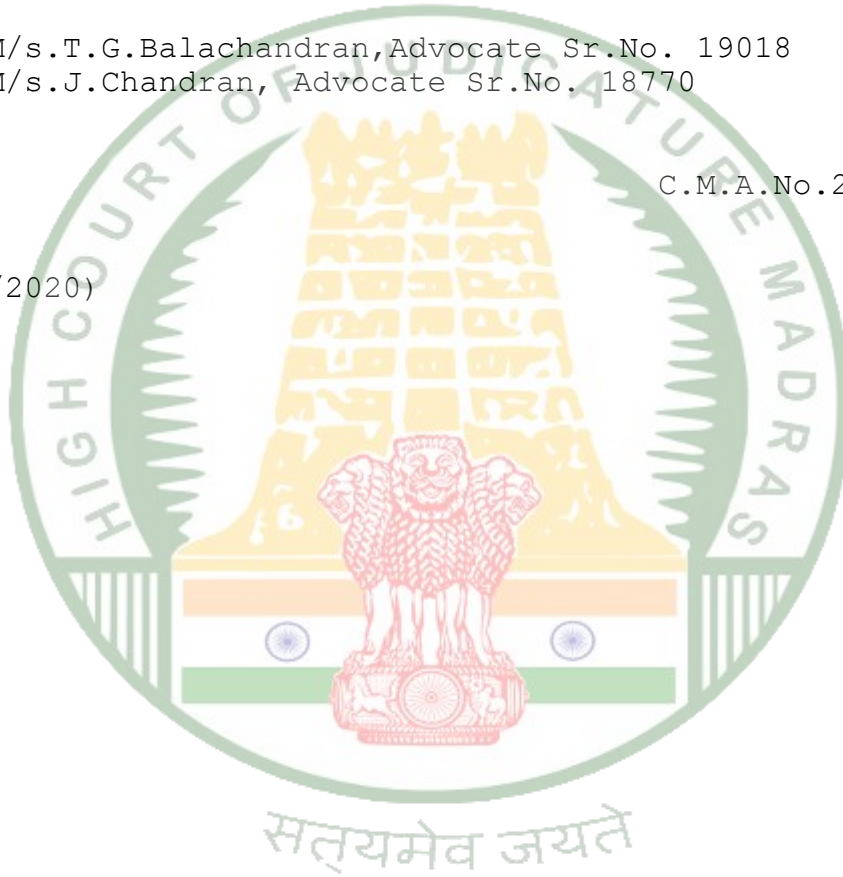
2.The Section Officer
V.R.Section
High Court, Chennai.

+1 cc to M/s.T.G.Balachandran,Advocate Sr.No. 19018

+1 cc to M/s.J.Chandran, Advocate Sr.No.18770

C.M.A.No.2903 of 2012

VBA (CO)
RMP (17/12/2020)



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