

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2723 of 2013

Selvam

.. Appellant/Petitioner

Vs.

1.V.Udayakumar
(R1 remained exparte before the Tribunal)

2.National Insurance Co.Ltd,
No.751, Anna Salai,
Mount Road,
Chennai-600 002. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.06.2012 made in M.C.O.P.No.576 of 2011 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant : Mr.F.Terry Chella Raja

For R2 : Mr.S.Arun Kumar

R1 : Exparte

J U D G M E N T
सत्यमेव जयते

The Civil Miscellaneous Appeal is filed by the appellant seeking enhancement of compensation granted by the Tribunal in the award dated 25.06.2012 made in M.C.O.P.No.576 of 2011 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.576 of 2011 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, 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 28.10.2010.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the Hero Honda Motor Cycle belonging to 1st respondent and directed the 2nd respondent/Insurance Company, being the insurer of the motorcycle to pay a sum of Rs.2,44,885/- 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 has sustained comminuted fracture of both bone right leg 1/3rd closed reduction, IMIL nailing on right Tibia and surgery was done on 29.10.2010. P.W.2/Doctor certified that the appellant suffered 50% disability and issued Ex.P8/disability certificate to that effect. The Tribunal without giving any valid reason, reduced the percentage of disability to 16% and awarded compensation only for 16% disability. The appellant has taken treatment at Pondicherry Institute of Medical Sciences as in-patient from 29.10.2010 to 03.11.2010 and thereafter took treatment as outpatient. The amount awarded by the Tribunal towards transportation is meagre. The appellant was the owner-cum-driver of Mahindra Tourist van and was earning a sum of Rs.20,000/- per month at the time of accident. Due to the injuries sustained by him in the accident, he could continue the work as he was doing earlier. But, the Tribunal has fixed only a meagre sum of Rs.4,500/- as monthly income of the appellant while awarding compensation towards disability by adopting multiplier method. The Tribunal ought to have fixed a sum of Rs.20,000/- as monthly income of the appellant and awarded more compensation towards disability. The Tribunal has not awarded any amount towards future prospects. 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 2nd respondent/Insurance Company contended that the appellant has not produced any document to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the monthly income fixed by the Tribunal at Rs.4,500/- is on the higher side and the compensation awarded by the Tribunal towards disability by adopting multiplier method is excessive. The appellant is not entitled to any amount towards future prospects. 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. From the materials available on record, it is seen that in the accident, the appellant sustained comminuted fracture of both bone right leg 1/3rd closed reduction IMIL nailing right Tibia and surgery was done on 29.10.2010. The appellant has taken treatment at Pondicherry Institute of Medical Sciences as in-patient from 29.10.2010 to 03.11.2010 and thereafter taken treatment as outpatient. To prove the nature of injuries and disability sustained by him in the accident, the appellant examined P.W.2/Doctor, who has assessed the disability of the appellant as 50% and marked the disability certificate as Ex.P8. P.W.2/Doctor further deposed that due to fracture of both bones, the appellant can not drive the vehicle for a long time. The Tribunal considering the evidence of P.W.2/Doctor, Ex.P8/disability certificate and nature of injuries, fixed disability suffered by the appellant at 16% for the whole body and awarded compensation towards 16% disability by adopting multiplier method. The reason given by the Tribunal for fixing disability of the appellant at 16% for whole body is proper.

9. It is the contention of the appellant that he was the owner-cum-driver of Mahindra Tourist car and was earning a sum of Rs.20,000/- per month. To prove the same, the appellant produced Ex.P3/driving license and Ex.P4/Insurance permit and RC Book copy. But the appellant has not produced any document to prove his income. In the absence of any material evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the appellant. The accident is of the year 2010 and the monthly income fixed by the Tribunal is meagre. Considering the year of accident, age and nature of work done by the appellant, a sum of Rs.7,500/- per month is fixed as notional income of the appellant. The appellant was aged 27 years at the time of accident. The Tribunal applied multiplier '18'. The correct multiplier is '17'. Thus, the amount awarded by the Tribunal towards disability is modified to Rs.2,44,800/- (Rs.7,500/- X 12 X 17 X 16/100). The Tribunal considering the evidence of P.W.2/Doctor and nature of injuries sustained by the appellant, has awarded amounts under different heads, which 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
1.	Disability	1,55,520/-	2,44,800 /-	Enhanced
2.	Transportation	5,000/-	5,000/-	Confirmed
3.	Extra nourishment	5,000/-	5,000/-	Confirmed
4.	Medical expenses	48,365/-	48,365/-	Confirmed
5.	Future medical expenses	5,000/-	5,000/-	Confirmed
6.	Damage to clothes	1,000/-	1,000/-	Confirmed
7.	Pain and sufferings	25,000/-	25,000/-	Confirmed
	Total	2,44,885/-	3,34,165/-	Enhanced by Rs.89,280/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,44,885/- is hereby enhanced to Rs.3,34,165/- 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 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 to the credit of M.C.O.P.No.576 of 2011 on the file of the Motor Accident Claims Tribunal, VI Small Causes 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 by making necessary application before the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

gbi

To

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

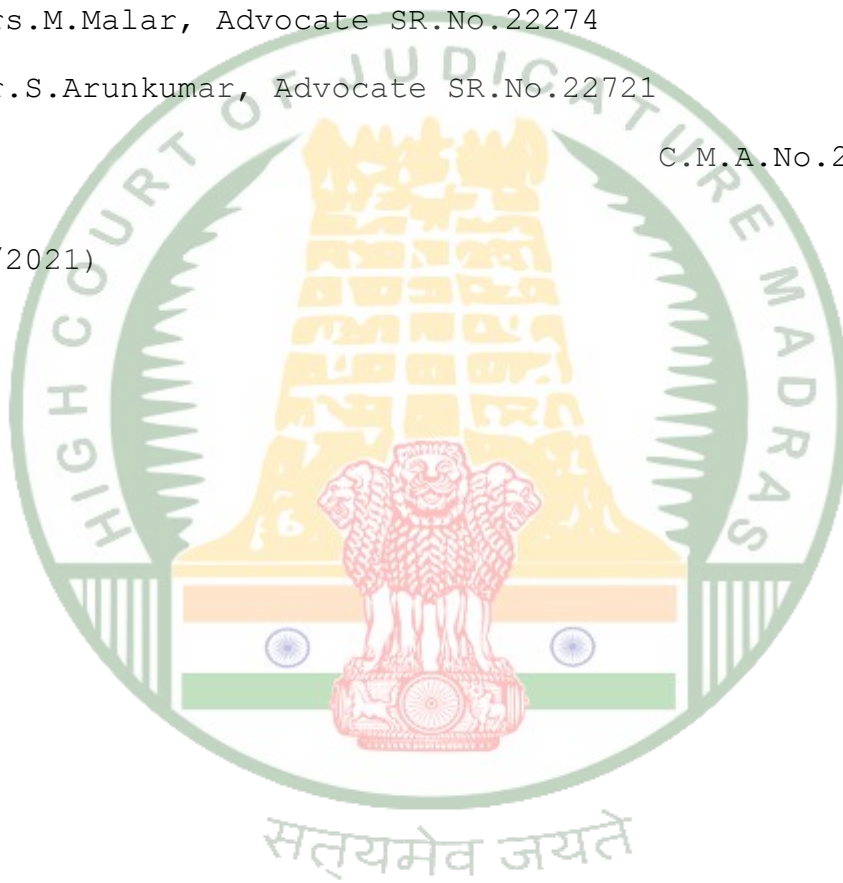
2.The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mrs.M.Malar, Advocate SR.No.22274

+1cc to Mr.S.Arunkumar, Advocate SR.No.22721

C.M.A.No.2723 of 2013

PVS (CO)
GMY (23/04/2021)



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