

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2738 of 2013

R.Venkatesan

.. Appellant

Vs.

1.V.Mohanasundram
S/o.Viswanathan
New No.11, old No.7, first street
Karpagam avenue
R.A.Puram, Chennai-28.
(R1 remained exparte before the Tribunal)

2.The United India Insurance Company Ltd.
No.38, Anna salai, Chennai-2. ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 15.06.2010 made in M.C.O.P.No.5585 of 2003 on the file of Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II, Chennai.

For Appellant : Mr.F.Terry Chellaraja

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 15.06.2010 made in M.C.O.P.No.5585 of 2003 on the file of Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II, Chennai.

2.The appellant is claimant in M.C.O.P.No.5585 of 2003 on the file of Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II, Chennai. He filed the said claim petition claiming a sum of Rs.11,55,000/- as compensation for the injuries sustained by him in the accident that took place on 16.11.2003.

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 Qualis car belonging to the 1st respondent and directed both the 1st respondent as well as the 2nd respondent/Insurance Company being insurer of the said car to jointly and severally pay a sum of Rs.2,05,619.21 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 at the time of accident, the appellant was earning a sum of Rs.16,547/- per month by working as a Foreman in Tamil Nadu Electricity Board. Due to the injuries, the appellant voluntarily retired from service. The appellant suffered fracture of head injury, pubic bone, shaft of femur and steel rod was implanted. The appellant examined the doctor as P.W.2, who has assessed the disability of the appellant as 50% and marked the disability certificate as Ex.P17 to prove the injuries. The Tribunal without assigning any reason, reduced the disability to 30% and awarded a meagre sum of Rs.45,000/- (Rs.1,500/- X 30%) towards disability at the rate of Rs.1,500/- per percentage of disability. But the Tribunal failed to add the said compensation for disability, while calculating the compensation. The appellant has taken treatment as in-patient in Isabella hospital, Chennai, from 16.11.2003 to 03.12.2003, in Ramachandra hospital, Porur, from 28.05.2004 to 02.06.2004 and thereafter, he has taken treatment as out-patient in Devaki hospital, Clinic Hospital and Sampath hospital. The Tribunal has not awarded any compensation towards attendant charges and loss of amenities. The appellant is still taking treatment for the injuries and the Tribunal ought to have awarded compensation towards future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Heard the learned counsel appearing for the appellant and perused all the materials available on record.

7. It is the contention of the appellant that in the accident, he suffered fracture of head injury, pubic bone, shaft of femur and steel rod was implanted. The appellant examined the doctor as P.W.2, who assessed the disability of the appellant as 50% and marked the disability certificate as Ex.P17 to prove the injuries. The Tribunal reduced the disability to 30% on the ground that P.W.2/Doctor has examined the appellant after six years of the accident and awarded a sum of Rs.45,000/- (Rs.1,500/- X 30%) towards disability at the rate of Rs.1,500/-

per percentage of disability. While calculating compensation, the Tribunal failed to add the said amount for disability. The respondents did not let in any oral and documentary evidence to disprove the evidence of P.W.2/Doctor and the disability certificate marked as Ex.P17. Therefore, the appellant is entitled to compensation for 50% disability, as there is no contra evidence. 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 while awarding compensation towards disability is proper. But the amount awarded by the Tribunal per percentage of disability is excessive. The accident is of the year 2003 and hence, a sum of Rs.1,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.50,000/- (Rs.1,000/- X 50%).

7(i).The appellant has contended that he has taken treatment as in-patient in Isabella hospital, Chennai, from 16.11.2003 to 03.12.2003, in Ramachandra hospital, Porur, from 28.05.2004 to 02.06.2004 and thereafter, he has taken treatment as out-patient in Devaki hospital, Clinic hospital and Sampath hospital. The Tribunal has not awarded any compensation towards attendant charges, loss of amenities and damage to clothes. Considering the nature of injuries, period of treatment taken by the appellant and the discharge summaries marked as Ex.P2 and P3, the sum of Rs.10,000/-, Rs.10,000/- and Rs.500/- are awarded towards attendant charges, loss of amenities and damage to clothes respectively. A sum of Rs.10,000/- altogether awarded by the Tribunal towards transportation, extra nourishment and miscellaneous expenses is meagre and hence, the same is hereby enhanced to Rs.20,000/-. 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.	Medical expenses	1,65,619.21	1,65,619.21	Confirmed
2.	Pain and suffering	10,000	10,000	Confirmed

3.	Transportation, extra nourishment and miscellaneous expenses	10,000	20,000	Enhanced
4.	Loss of income	20,000	20,000	Confirmed
5.	Attendant charges	-	10,000	Granted
6.	Loss of amenities	-	10,000	Granted
7.	Damage to clothes	-	500	Granted
8.	Disability	-	50,000	Granted
	Total	2,05,619.21	2,86,119.21 rounded off to 2,86,119	Enhanced by Rs.80,500/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,05,619.21 is hereby enhanced to Rs.2,86,119/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Both the respondents are directed to jointly and severally 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. 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.80,500/- enhanced by this Court as per the order of this Court dated 18.07.2013 in M.P.No.1 of 2011 in C.M.A.SR.No.104385 of 2011. No costs.

Sd/-
Assistant Registrar (CS VIII)
//True Copy//

Sub Assistant Registrar

kj

To

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

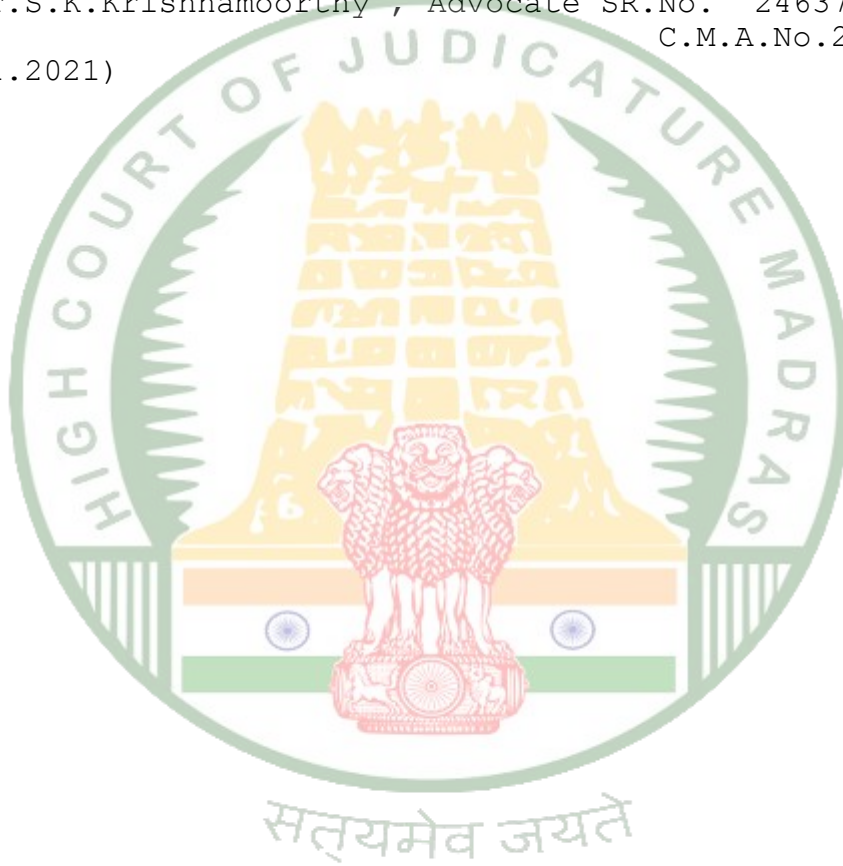
2.The Section Officer
V.R.Section
High Court, Chennai.

+lcc to M/s.M.Malar , Advocate SR.No. 24603

+lcc to Mr.S.K.Krishnamoorthy , Advocate SR.No. 24637

C.M.A.No.2738 of 2013

A.SK(07.01.2021)



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