

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2962 of 2013

Ubagaranathan @ Vincent @ Nathan .. Appellant

Vs.

1.Rajkumar Gavaskar.D
(R1 remained exparte before Tribunal)

2.TATA AIG General Insurance Co. Limited
No.1, Commandor in Chief Road
Egmore, Chennai - 600 008. ...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.04.2013, made in M.C.O.P. No.2043 of 2011, on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr. F.Terry Chella Raja
For R2 : Mr.K.Vinod
R1 : Exparte

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 12.04.2013, made in M.C.O.P. No.2043 of 2011, on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P. No.2043 of 2011, on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 19.09.2010.

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 car belonging to

the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.3,90,465/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 12.04.2013, made in M.C.O.P. No.2043 of 2011, the appellant has come out with the present appeal seeking enhancement of compensation.

5. Learned counsel appearing for the appellant contended that the Tribunal has not properly considered the evidence of P.W.5 and P.W.6/Doctors, who have assessed the disabilities of the appellant at 20% and 50%. The Tribunal ought to have granted compensation for 100% disability. The Tribunal rightly applied multiplier method and granted compensation towards loss of earning power but erroneously fixed the disability for whole body at 24%. The Tribunal failed to consider nature of injuries and nature of disabilities. The appellant was working as a Carpenter and was earning a sum of Rs.10,000/- per month. The amount awarded by the Tribunal for loss of income is meagre. The appellant has taken treatment as in-patient in three different hospitals, in total, for a period of 58 days. The Tribunal considering the nature of injuries and period of treatment, ought to have awarded more compensation for extra nourishment and pain & sufferings. The Tribunal has not awarded any amount towards attendant charges, loss of amenities and damages to clothes and prayed for enhancement of compensation.

6. Per contra, learned counsel appearing for the second respondent/Insurance Company contended that the appellant failed to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal has fixed a sum of Rs.6,000/- per month as notional income of the appellant, which is not meagre. P.W.5 and P.W.6/Doctors, assessed the disability of the appellant for two parts of the body as 70%. The Tribunal converted the disability to whole body and fixed the disability at 24%. The appellant failed to prove that he lost his earning power. In the absence of any evidence to prove that he lost his earning power, the Tribunal erroneously applied multiplier method and awarded excessive amount towards disability. In view of the same, the appellant is not entitled to any enhancement and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the 2nd respondent/Insurance company and perused the materials available on record.

8.It is the contention of the appellant that at the time of accident, he was working as a Carpenter and was earning a sum of Rs.10,000/- per month. The appellant has not filed any material evidence to substantiate the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the appellant and awarded compensation towards loss of income for five months. The accident has occurred in the year 2010 and the monthly income fixed by the Tribunal is meagre. Considering the year of accident and nature of work, a sum of Rs.9,000/- per month is fixed as notional income of the appellant. Accordingly, the compensation awarded by the Tribunal towards loss of income is modified to Rs.45,000/- (Rs.9,000/- X 5 months). As far as disability is concerned, P.W.5 and P.W.6/Doctors examined the appellant and assessed that the appellant suffered 20% and 50% disability, for two parts of the body. The Tribunal converted the same to whole body and fixed the disability at 24% and applied multiplier method for awarding compensation towards loss of earning power. The percentage of disability to whole body fixed by the Tribunal is proper. Thus, the compensation awarded by the Tribunal towards loss of earning power is modified to Rs.3,36,960/- (Rs.9,000/- X 12 X 13 X 24/100).

9.From the award passed by the Tribunal, it is seen that in the accident, the appellant sustained fracture on his head and right hip and multiplies injuries all over the body. He has taken treatment as in-patient for 58 days in three different spells, in three different hospitals for the period from 19.09.2010 to 23.09.2020, 24.09.2010 to 11.11.2010 and 11.11.2010 to 17.11.2010. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards transportation and extra nourishment are meagre and hence the same are enhanced to Rs.10,000/- and Rs.20,000/- respectively. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. The appellant is entitled to a sum of Rs.20,000/- towards attendant charges and Rs.10,000/- towards loss of amenities. The amounts awarded by the Tribunal towards pain and sufferings, medical expenses and damages to cloth 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.	Loss of income	30,000/-	45,000/-	Enhanced
2.	Transportation	3,000/-	10,000/-	Enhanced
3.	Extra nourishment	7,000/-	20,000/-	Enhanced
4.	Damage to cloth	1,000/-	1,000/-	Confirmed
5.	Medical Expenses	79,825/-	79,825/-	Confirmed
6.	Pain and sufferings	45,000/-	45,000/-	Confirmed
7.	Loss of earning power	2,24,640/-	3,36,960/-	Enhanced
8.	Attendant charges	-	20,000/-	Granted
9.	Loss of amenities	-	10,000/-	Granted
	Total	Rs.3,90,465/-	Rs.5,67,785/-	Enhanced by Rs.1,77,320/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.3,90,465/- is hereby enhanced to Rs.5,67,785/- along with interest and costs. 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 if any already deposited, 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.2043 of 2011, on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the necessary court fee, if any, on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

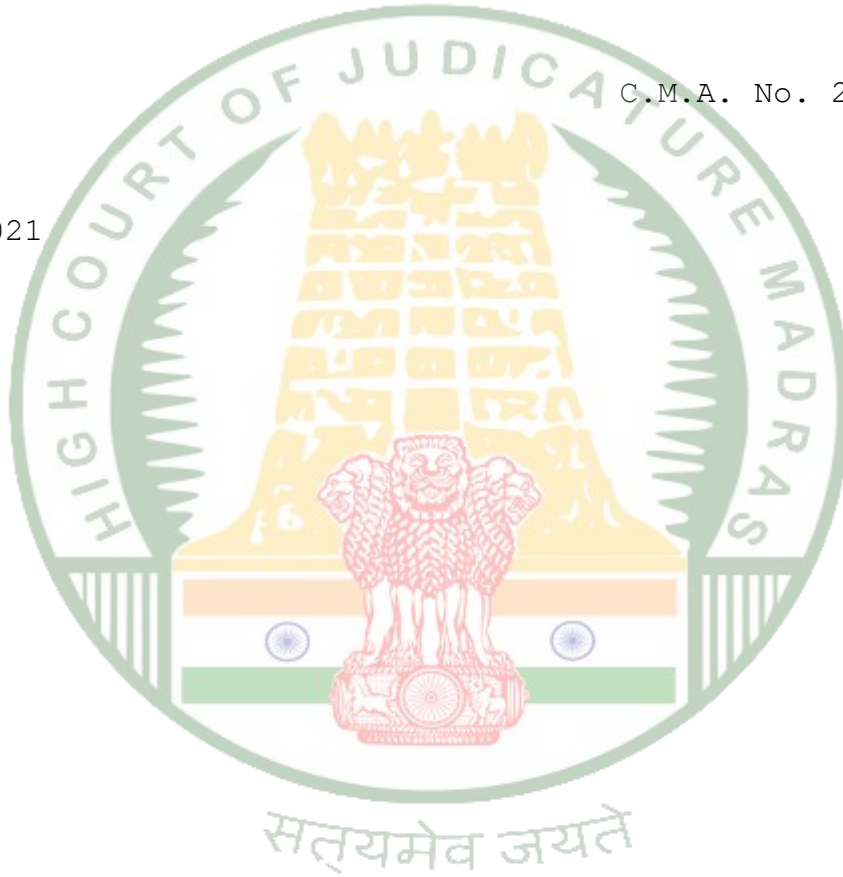
To

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

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

C.M.A. No. 2962 of 2013

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