

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3126 of 2013

K.Raju

.. Appellant/Petitioner

Vs.

1.V.Gowthaman
(was set exparte in the Trial Court)

2.The New India Assurance Co. Ltd.,
No.45, Moore Street,
Chennai - 600 001.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 13.02.2008 made in M.C.O.P.No.4802 of 2002 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.F.Terry Chella Raja

For R2 : Mr.R.Neethiperumal

R1 : Exparte

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 13.02.2008 made in M.C.O.P.No.4802 of 2002 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

2.The appellant is claimant in M.C.O.P.No.4802 of 2002 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai. He filed the said claim petition claiming a sum of Rs.3,50,000/- as compensation for the injuries sustained by him in the accident that took place on 25.05.2002.

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 tractor belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said tractor to pay a sum of Rs.93,300/- as compensation to the appellant at the first instance and thereafter recover the same from the 1st respondent.

4.Not being satisfied with the quantum of compensation 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 aged 39 years at the time of accident and was earning a sum of Rs.10,000/- per month by working as a Police Head Constable. The appellant has sustained grievous crush injuries, amputation of left big toe and 2nd & 3rd toes and multiple injuries all over the body. Due to the injuries, the appellant is unable to walk freely and he could not do the work as he was doing earlier. To prove the same, the appellant examined PW3/Doctor who assessed the disability of the appellant as 40%. The Tribunal has not awarded any amount towards medical expenses, attendant charges, damages to cloth 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 both oral and documentary evidence in proper perspective has 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 has sustained grievous crush injuries, amputation of left big toe and 2nd & 3rd toes and multiple injuries all over the body. Due to the injuries, the appellant is unable to walk freely and he could not do the work as he was doing earlier. The appellant examined one Dr.N.Saichandran as P.W.3, who assessed the disability of the appellant as 40% and marked Ex.P10/disability certificate and Ex.P11/X-ray to prove the same. The Tribunal accepting the disability certificate, awarded a sum of Rs.40,000/- (Rs.1,000/- X 40%) towards disability at the rate of

Rs.1,000/- per percentage of disability. The accident is of the year 2002. The amounts awarded by the Tribunal for disability is not meagre. Therefore, the appellant is not entitled to enhancement towards disability.

9. According to the appellant, he was aged 39 years at the time of accident and was earning a sum of Rs.10,000/- per month by working as a Police Head Constable. The appellant has marked Ex.P5/salary certificate to prove his avocation and income. As per Ex.P5/salary certificate the total income of the appellant on the date of accident was Rs.6,046/-. The appellant has taken treatment as in-patient in Government Stanley Hospital, Chennai from 25.05.2002 to 26.10.2002 for 83 days and subsequently he underwent surgery on 10.07.2002. To prove the same, he marked Ex.P1/discharge summary, Ex.10/disability certificate and Ex.P11/x-ray. The Tribunal has not awarded any amount towards medical expenses, attendant charges, loss of amenities and damages to clothes. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.10,000/-, Rs.30,600/-, Rs.10,000/- and Rs.500/- are awarded towards medical expenses, attendant charges, loss of amenities and damages to clothes respectively. The amounts awarded by the Tribunal towards transport expenses, extra nourishment and pain & sufferings are meagre. Hence, the same are enhanced to Rs.5,000/-, Rs.20,000/- and Rs.20,000/- respectively. 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 earning	30,230	30,230	Confirmed
2.	Transport expenses	2,000	5,000	Enhanced
3.	Extra nourishment	1,000	20,000	Enhanced
4.	Pain and sufferings	10,000	20,000	Enhanced
5.	Disability	40,000	40,000	Confirmed
6.	Loss of earning power	10,000	10,000	Confirmed

7.	Medical expenses	-	10,000	Granted
8.	Attendant charges	-	30,600	Granted
9.	Loss of amenities	-	10,000	Granted
10.	Damages to clothes	-	500	Granted
	Total	Rs.93,230/- is rounded off to Rs.93,300/-	Rs.1,76,330/- is rounded off to Rs.1,76,300/-	Enhanced by Rs.83,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.93,300/- is hereby enhanced to Rs.1,76,300/- 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 shall not be entitled for any interest for the delay period on the enhanced amount of Rs.83,300/- as per the order of this Court dated 29.08.2013 made in M.P.No.1 of 2013 in C.M.A.SR.No.71220 of 2013. 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 at the first instance and thereafter recover the same from the 1st respondent. 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/-

सतरा
Assistant Registrar

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Sub Assistant Registrar

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To

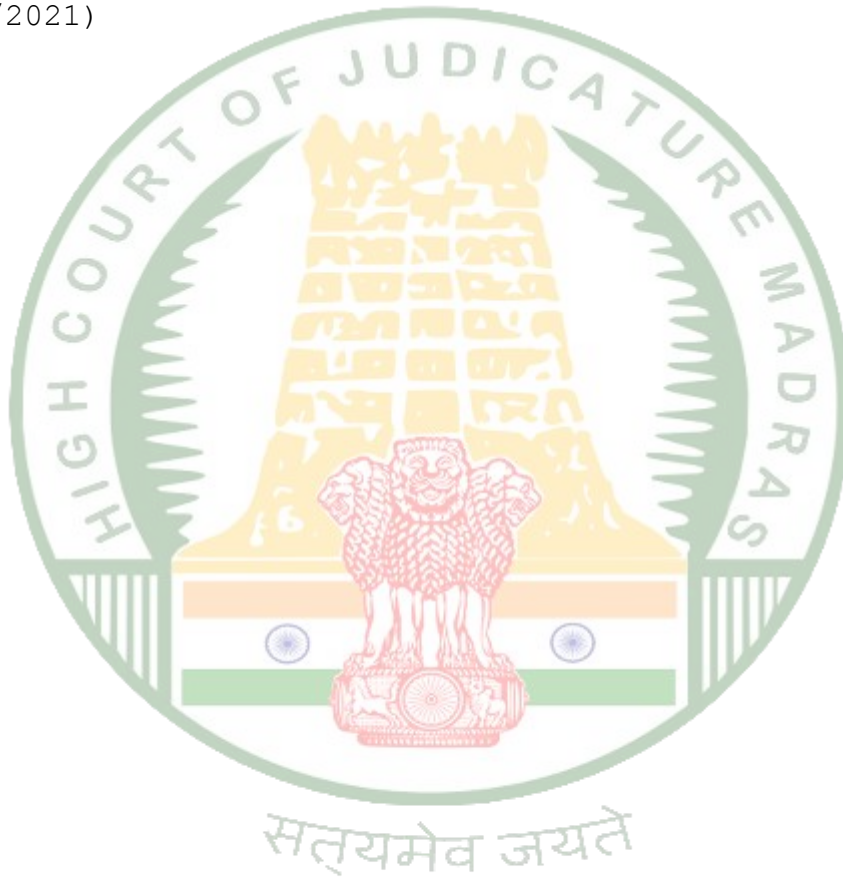
1. The IV Judge,
The Motor Accident Claims Tribunal
Small Causes Court,
Chennai.

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

+1 cc to M/s.M.Malar, Advocate Sr.No. 23910
+1 cc to M/s.R.Neethiperumal, Advocate Sr.No. 23479

C.M.A.No.3126 of 2013

SAI (CO)
RMP (06/01/2021)



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