

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.2198 OF 2016

Nesaraj

.. Appellant/Petitioner

Vs.

1. Janardhan

2. The National Ins. Co. Ltd.,  
Rep.By its Divisional Officer,  
328, Mint Street, Sowcarpet,  
Chennai.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 07.01.2008, made in M.C.O.P. No. 513 of 1984, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Chengalpattu.

For Appellant : Ms.S.Ramya  
for M/s.J.Mahalingam  
For Respondents: Mr.S.Arunkumar (for R2)

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 07.01.2008, made in M.C.O.P. No. 513 of 1984, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Chengalpattu.

2.The appellant-claimant filed M.C.O.P. No. 513 of 1984, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Chengalpattu, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 03.04.1984.

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 Lorry belonging to the 1<sup>st</sup> respondent and directed the 2<sup>nd</sup> respondent-Insurance

Company to pay a sum of Rs.1,90,500/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 07.01.2008, made in M.C.O.P. No. 513 of 1984, the appellant has come out with the present appeal.

5. Learned counsel appearing for the appellant contended that in the accident, the appellant suffered fracture of right zygoma, fracture of supra orbital right, severe head injuries and loss of vision in right eye and has taken treatment as in-patient in Government General Hospital, Chennai from 03.04.1984 to 27.04.1984 and further continued treatment as out-patient in the same Hospital and Ophthalmic Hospital till 15.06.1984. P.W.2- Doctor has assessed that the appellant suffered 30% disability for the head injuries and 30% disability for the loss of right eye sight. The Tribunal ought to have calculated the loss of earning power for 60% disability, instead of 50% disability. At the time of accident, he was working as Press Operator and was earning a sum of Rs.350/- per day. It took more than a year for the appellant to recover and due to the injuries sustained in the accident, he could not do his work as he was doing earlier. The Tribunal has not awarded any amount towards attendant charges and transportation expenses. The amounts awarded by the Tribunal under other heads are meagre and prayed for enhancement of the compensation.

6. The learned counsel appearing for the 2<sup>nd</sup> respondent- Insurance Company made submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

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

8. It is the contention of the appellant that in the accident, he suffered fractures, severe head injuries and loss of vision in right eye. The appellant proved the same by examining P.W.2 - Doctor. P.W.2- Doctor has assessed that he suffered 30% disability for the head injuries, 30% disability for the loss of right eye sight and issued Exs.P9, P13 and P14 - disability certificates. The respondents did not let in any evidence to disprove the evidence of P.W.2- Doctor and disability certificate marked as Exs.P9, P13 and P14. The Tribunal reduced the percentage of disability to 50% on the ground that the disability assessed by the Doctor is on the higher side. The reason given by the Tribunal for reducing the percentage of disability is not valid. The appellant is entitled to compensation towards disability for 60% disability, as there

is no contra evidence. The appellant contended that at the time of accident, he was 17 years old, working as Press Operator and was earning a sum of Rs.350/- per day, but he failed to substantiate the same. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.15,000/- per annum as the notional income. The appellant was aged 17 years at the time of accident. The accident is of the year 1984. The notional income fixed by the Tribunal is proper. The correct multiplier applicable as per 2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another], is '18'. the Tribunal erroneously applied the multiplier '16'. Hence, applying the multiplier '18', the amount awarded by the Tribunal towards loss of earning capacity is modified to Rs.1,62,000/- (Rs.15,000/- x 18 x 60%).

9. Due to the injuries sustained in the accident, the appellant has taken treatment as in-patient in Government General Hospital, Chennai from 03.04.1984 to 27.04.1984 and further continued treatment as out-patient in the same Hospital and Ophthalmic Hospital till 15.06.1984. Considering the period of treatment and the nature of injuries suffered by the appellant, a sum of Rs.5,000/- is awarded towards attendant charges and Rs.2,000/- is awarded towards transportation charges. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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 earning capacity    | 1,20,500/-                      | 1,62,000/-                        | Enhanced                               |
| 2.   | Loss of income              | 10,000/-                        | 10,000/-                          | Confirmed                              |
| 3.   | Nutritious food             | 5,000/-                         | 5,000/-                           | Confirmed                              |
| 4.   | Pain and suffering          | 20,000/-                        | 20,000/-                          | Confirmed                              |
| 5.   | Loss of amenities           | 15,000/-                        | 15,000/-                          | Confirmed                              |
| 6.   | Loss of expectation of life | 10,000/-                        | 10,000/-                          | Confirmed                              |

|    |                            |            |            |                         |
|----|----------------------------|------------|------------|-------------------------|
| 7. | Loss of marriage prospects | 10,000/-   | 10,000/-   | Confirmed               |
| 8. | Attendant charges          | -          | 5,000/-    | Granted                 |
| 9. | Transportation charges     | -          | 2,000/-    | Granted                 |
|    | Total                      | 1,90,500/- | 2,39,000/- | Enhanced by Rs.48,500/- |

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,90,500/- is enhanced to Rs.2,39,000/- along with interest and costs. The 2<sup>nd</sup> respondent-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 513 of 1984. On such deposit, the appellant is permitted to withdraw the enhanced award amount, 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 court fee, if any, on the enhanced amount of Rs.48,500/-. No costs.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Principal Subordinate Judge,  
(Motor Accident Claims Tribunal), Chengalpattu.

Copy To  
The Section Officer,  
V.R Section, High Court, Madras.

+2cc to M/s.J.Mahalingam, Advocate, S.R.No.14617  
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.15347

C.M.A.No.2198 of 2016

BR(CO)  
CS/23/04/2021