

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2252 of 2016

C.Sivagurunathan

.. Appellant/Claimant

Vs.

1. R.Udayakumar

2. The Branch Manager,
ICICI Lombard General Insurance Co.Ltd.,
Chottabai Centre No.140,
Nungambakkam,
High Road,
Chennai-34. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.07.2016 made in M.C.O.P.No.576 of 2014 on the file of the Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

For Appellant	:	Mr.R.Nalliyappan
For R2	:	Mr.K.K.Ramakrishnan
For R1	:	EX-Parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 13.07.2016 made in M.C.O.P.No.576 of 2014 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.IV, Chennai.

2.The appellant is the claimant in M.C.O.P.No.576 of 2014 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.IV, Chennai. He filed the above 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 06.01.2014.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to rash and negligent driving by the driver of the van belonging to the first respondent herein and directed the second respondent-Insurance Company, being insurer of the van to pay a sum of Rs.1,41,500/- as compensation to the appellant, at the first instance and recover the same from the 1st respondent, owner of the van, for violation of policy condition.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal for enhancement of compensation.

5.The learned counsel appearing for the appellant contended that in the accident the appellant sustained head injury and fracture of right parietal bone and right clavicle. The appellant proved the same by examining P.W.2/Doctor. P.W.2/Doctor has assessed the disability suffered by the appellant as 60% but the Tribunal reduced the percentage of disability from 60% to 30% and awarded a meagre sum of Rs.90,000/- towards disability. Due to the injuries sustained by the appellant, he was not able to discharge his daily life and he feels severe pain and having regular giddiness. Under such circumstances, the Tribunal ought to have adopted multiplier method for granting compensation towards disability. The appellant was working as helper at Raj Electricals, Chennai and was earning a sum of Rs.7,500/- per month and the Tribunal has awarded a very meagre sum of Rs.6,500/- towards loss of income for one month. The Tribunal ought to have granted compensation for loss of income for three months. Due to the injuries and disability, the appellant has taken treatment in the Government Royapettah Hospital, Chennai, as in-patient from 06.01.2014 to 11.01.2014. The amounts awarded by the Tribunal towards attendant charges, loss of amenities, extra nourishment, pain and suffering, transportation and future medical expenses are meagre and therefore, prayed for enhancement of compensation.

6.Per contra, Mr.K.K.Ramakrishnan, learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal reduced the percentage of disability from 60% to 30% on the ground that the P.W.2/doctor has not assessed the disability for the whole body, but only for a part of the body and he has not filed any worksheet and guidelines for assessing the disability. The appellant failed to prove that he suffered functional disability and hence, he is not entitled to compensation by adopting multiplier method. The appellant has not produced any documents to prove his avocation and income and that he lost his income during the treatment period. In such circumstances, the Tribunal fixed a sum of Rs.6,500/- per month

as notional income of the appellant and awarded a sum of Rs.6,500/- as compensation towards loss of income for one month, which is not meagre. The amounts awarded by the Tribunal under different heads are not meagre and 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 second respondent/Insurance Company and perused the materials available on record.

8. It is the contention of the appellant that he suffered head injury, squamous bone @ Temp lobe, fracture of right parietal bone and fracture of right clavicle. P.W.2/Doctor assessed the disability of the appellant as 60%. The second respondent did not let in any contra evidence to disprove the evidence of PW.2/Doctor. The Tribunal reduced the percentage of disability to 30% on the ground that the P.W.2/doctor has not assessed the disability for the whole body, but only for a part of the body and that the assessment of disability by PW.2 Doctor is on the higher side and awarded a sum of Rs.90,000/- (Rs.3,000 X 30% of disability) by fixing Rs.3,000/- per percentage of disability. The reason given by the Tribunal for reducing the percentage of disability is not correct. The appellant is entitled to compensation for 60% of disability. In the case of "M/s.IFFO TOKIO General Insurance Company Ltd. vs. Venkatesh and another" in C.M.A.No.4870 of 2019, dated 09.01.2020, considering the escalation in cost of living, this Court has fixed a sum of Rs.4,000/- per percentage of disability sustained by the injured in the accidents that were occurred during 2014-15 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from 2016 onwards. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.2,40,000/- (Rs.4,000 X 60% of disability) by awarding a sum of Rs.4,000/- per percentage of disability.

9. The appellant has contended that at the time of accident, he was working as helper at Raj Electricals, Chennai and was earning a sum of Rs.7,500/- per month. He failed to substantiate the said contention. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.6,500/- per month as notional income of the appellant. The accident is of the year 2014 and the notional income fixed by the Tribunal is meagre. Considering the age of the appellant and year of accident, a sum of Rs.7,500/- per month is fixed as notional income of the appellant. Considering the nature of injuries sustained by the appellant, he would not have attended his work atleast for a period of three months. Hence, a sum of Rs.22,500/- (Rs.7,500/- X 3 months) is awarded towards loss of income. The amounts awarded by the Tribunal

towards extra nourishment, transportation, damages to clothes, attender charges and loss amenities are meagre and the same are enhanced to Rs.10,000/- and Rs.5,000/-, Rs.3,000/-, Rs.10,000/- and Rs.10,000/- respectively. 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.	Disability	90,000/-	2,40,000/-	enhanced
2.	Pain & sufferings	25,000/-	25,000/-	confirmed
3.	Extra nourishment	3,500/-	10,000/-	enhanced
4.	Transportation	3,500/-	5,000/-	enhanced
5.	Damages to clothes	750/-	3,000/-	enhanced
6.	Attender charges	1,200/-	10,000/-	enhanced
7.	Medical expenses	5,000/-	5,000/-	confirmed
8.	Future medical expenses	3,000/-	3,000/-	confirmed
9.	Loss of income	6,500/-	22,500/-	enhanced
10.	Loss of amenities	3,000/-	10,000/-	enhanced
	Total	Rs.1,41,450/-	Rs.3,33,500/-	enhanced by Rs.1,92,050/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,41,450/- is hereby enhanced to Rs.3,33,500/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court together 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 order to the credit of M.C.O.P.No.576 of 2014, at the first instance and recover the same from the 1st respondent/owner of the van. On such deposit,

the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

gbi

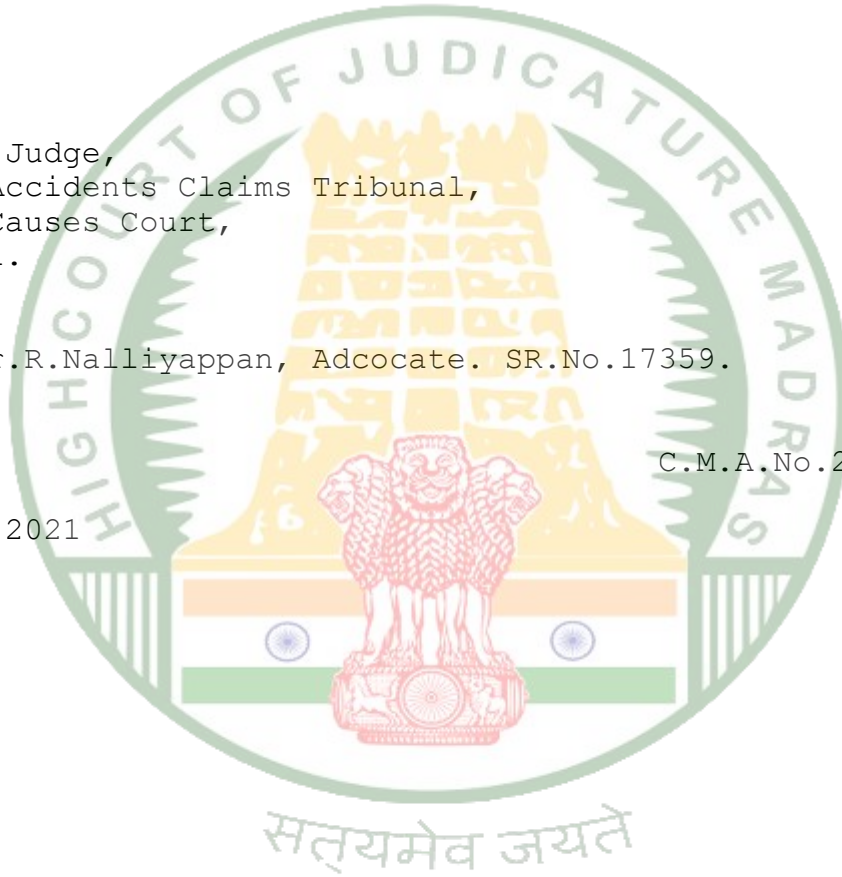
To

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

+1cc to Mr.R.Nalliyappan, Adcocate. SR.No.17359.

C.M.A.No.2252 of 2016

SV(CO)
CSR 21.04.2021



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