

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.554 of 2020

K.Aruldevan

.. Appellant/Petitioner

Vs.

1.M.Sasikala

2.ICICI Lombard General Ins. Co.Ltd.

No.140, Nungambakkam high road

2nd floor, Chottabhai centre

Chennai-600 034.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.12.2018 made in M.C.O.P.No.1655 of 2015 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mrs.R.Sreevidhya

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 05.12.2018 made in M.C.O.P.No.1655 of 2015 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.1655 of 2015 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai. He filed the 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 07.09.2013.

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 motorcycle

belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.1,50,900/- 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 due to the accident, the appellant suffered fracture of PPX3 finger right hand, right foot crush injury and grievous injuries all over the body. He examined the Doctor as P.W.2, who has assessed the disability of the appellant as 25% and marked the disability certificate as Ex.P16. The Tribunal erred in reducing the disability to 10% and awarded only a meagre sum of Rs.30,000/- towards disability at the rate of Rs.3,000/- per percentage of disability. Due to the injuries, the appellant is facing difficulty in climbing stairs, standing, squatting on floor and sitting cross legged. The Tribunal ought to have adopted multiplier method to award compensation towards loss of earning power. The Tribunal has not awarded any compensation towards loss of amenities. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. The learned counsel appearing for the 2nd respondent/Insurance Company made her submissions supporting the award passed by the Tribunal 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 suffered Grade III A Lisfranc D/L with fracture base of 2,3,4th MTB right fracture and right hand finger, right foot crush injury and grievous injuries all over the body. The appellant examined Dr.M.Saravana Bavanantham as P.W.2, who has assessed the disability of the appellant as 25% and marked the disability certificate as Ex.P16 to prove the injuries. The Tribunal reduced the disability of the appellant to 10% on the ground that P.W.2 is not the Doctor, who treated the appellant, the Doctor has not filed any working sheet for assessing the disability and awarded a sum of Rs.30,000/- (Rs.3,000/- X 10%) towards disability at the rate of Rs.3,000/- per percentage of

disability. 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 is proper. The respondents did not let in any contra evidence to disprove the disability assessed by P.W.2/Doctor and the disability certificate marked as Ex.P16. Therefore, the reason assigned by the Tribunal for reducing the percentage of disability assessed by P.W.2/Doctor is not correct. The appellant is entitled to compensation for 25% disability as there is no contra evidence. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.75,000/- (Rs.3,000/- X 25%).

8(i).According to the appellant, he has taken treatment as in-patient in Aakash hospital, from 08.09.2013 to 11.09.2013 and underwent surgery on 08.09.2013. The sum of Rs.1,000/- and Rs.3,000/- awarded by the Tribunal towards attendant charges and transportation are meagre. Considering the nature of injuries and period of treatment taken by the appellant, the compensation awarded by the Tribunal towards attendant charges and transportation are hereby enhanced to Rs.5,000/- each. The Tribunal has not awarded any compensation towards loss of amenities and hence, a sum of Rs.20,000/- is awarded towards loss of amenities. 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.	Disability	30,000	75,000	Enhanced
2.	Pain & suffering	20,000	20,000	Confirmed
3.	Extra nourishment	10,000	10,000	Confirmed
4.	Transportation	3,000	5,000	Enhanced
5.	Medical expenses	62,915	62,915	Confirmed
6.	Attendant charges	1,000	5,000	Enhanced

7.	Loss of earning	14,000	14,000	Confirmed
8.	Loss of future prospects	10,000	10,000	Confirmed
9.	Loss of amenities	-	20,000	Granted
	Total	1,50,915 rounded off to 1,50,900	2,21,915 rounded off to 2,21,900	Enhanced by Rs.71,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,50,900/- is hereby enhanced to Rs.2,21,900/- 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 is not entitled for any interest on the delay period on the amount of Rs.71,000/- enhanced by this Court as per the order of this Court dated 10.02.2020 in C.M.P.No.2405 of 2020 in C.M.A.SR.No.12595 of 2020. 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. 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.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

kj

To

1. The Special Subordinate Judge I
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

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

4/8

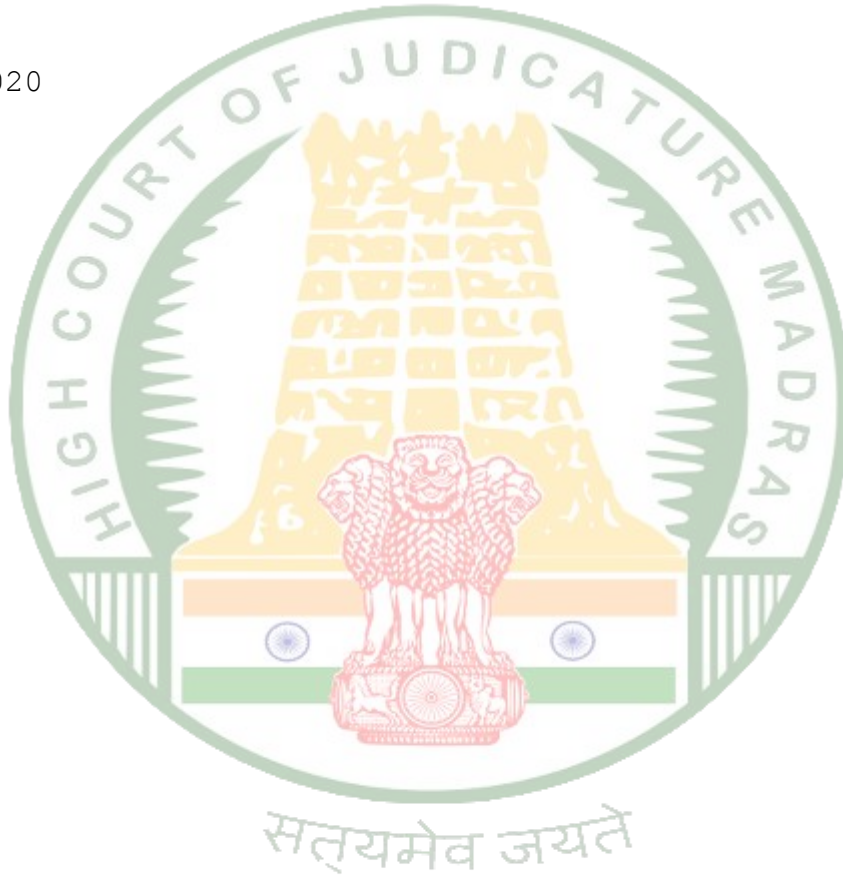
+2 ccs to Mr.Mohan Choudary Advocate sr14427

+1 cc to Mr.K.Varadhakamaraj Advocate sr13535

+1 cc to Mrs.R.Sreevidhya Advocate sr14149

C.M.A.No.554 of 2020

kk(co)
aa12/08/2020



WEB COPY