

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.515 of 2013

A.Joseph

.. Appellant/Petitioner

Vs.

1.M.Sundar

(R1 was set exparte in the Trial Court)

2.Bajaj Allianz General Insurance Company Limited,
Prince Towers,
No.25/26, College Road,
Nungambakkam,
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 02.11.2012 made in M.C.O.P.No.3443 of 2007 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant	:	Mr.A.Prakash
		for M/s. C & K Law Firm
For R2	:	M/s.K.Poomalai
R1	:	Exparte

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 02.11.2012 made in M.C.O.P.No.3443 of 2007 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.3443 of 2007 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.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.08.2007.

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 auto belonging to the 1st respondent and directed the 1st respondent-owner of the auto, to pay a sum of Rs.1,14,000/- as compensation to the appellant and dismissed the claim petition as against the 2nd respondent-Insurance Company on the ground that the 1st respondent's auto was not having valid insurance policy at the time of accident.

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 the appellant was working as Marketing Executive in The Precision Scientific Company, Teynampet, Chennai and was earning a sum of Rs.7,000/- per month. The Tribunal fixed only a meagre sum of Rs.4,500/- per month as notional income of the appellant. Due to the injuries sustained by him in the accident, the appellant could not carry on the work as he was doing earlier. The Tribunal ought to have awarded compensation by adopting multiplier method. The appellant examined the Doctor as P.W.2, who deposed that appellant suffered 27% disability. But the Tribunal awarded only a meagre sum of Rs.44,000/- towards disability. The Tribunal failed to award any amount towards future medical expenses and attendant charges. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation.

6.The 1st respondent remained exparte before the Tribunal. Hence, notice to 1st respondent dispensed with.

7.Mr.K.Poomalai, learned counsel appearing for the 2nd respondent-Insurance Company contended that the claim petition was dismissed against the 2nd respondent-Insurance Company and no relief was sought for against the 2nd respondent-Insurance Company in the present appeal. The appellant has not challenged the said portion of the award in the present appeal and prayed for dismissal of the appeal as against the 2nd respondent-Insurance Company.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

9.The appellant has filed the present appeal for enhancement of compensation awarded by the Tribunal. It is the contention of the learned counsel appearing for the appellant that appellant was working as Marketing Executive in The Precision Scientific

Company, Teynampet, Chennai and was earning a sum of Rs.7,000/- per month. He failed to substantiate the same. The Tribunal in the absence of material evidence with regard to avocation and income, fixed notional income of the appellant at Rs.4,500/- per month. The accident occurred in the year 2007 and the notional income fixed by the Tribunal is meagre. Considering the year of accident, age and nature of work done by the appellant, a sum of Rs.6,000/- per month is fixed as notional income of the appellant. Due to the injuries sustained by him in the accident, the appellant would not have worked atleast for a period of three months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.18,000/- (Rs.6,000/- X 3 months). In the accident, the appellant suffered injuries in left hand and little finger. P.W.2/Doctor who deposed about the nature of injuries and treatment taken, certified that appellant suffered 27% disability. The Tribunal reduced the percentage of disability to 22% holding that the percentage of disability fixed by P.W.2/Doctor is on the higher side. The said reasoning is not correct. The appellant is entitled to compensation for 27% disability. The appellant failed to prove that he suffered functional disability and lost his earning capacity. The Tribunal considering the evidence of P.W.2/Doctor, awarded compensation by adopting percentage method. There is no error in the award of the Tribunal by adopting percentage method and hence, appellant is not entitled to any compensation by adopting multiplier method for disability. The Tribunal has awarded a sum of Rs.2,000/- per percentage of disability. The accident occurred in the year 2007 and a sum of Rs.2,000/- per percentage of disability awarded by the Tribunal is not meagre. Thus, the compensation awarded by the Tribunal is modified to Rs.54,000/- (Rs.2,000/- X 27% of disability).

10. From the materials available on record, it is seen that the appellant has taken treatment in M/s. Balaji Hosptial, Guindy, Chennai as in-patient for 4 days from 30.08.2007 to 02.09.2007 and the Tribunal has not awarded any amount towards attendant charges and loss of amenities. Therefore, the appellant is entitled to a sum of Rs.5,000/- each towards attendant charges and loss of amenities. The amounts awarded by the Tribunal towards pain and sufferings, extra nourishment, transportation, medical bills and damage to clothes 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.	Disability	44,000/-	54,000/-	Enhanced

2.	Pain and sufferings	12,000/-	12,000/-	Confirmed
3.	Loss of income	13,500/-	18,000/-	Enhanced
4.	Extra nourishment	7,000/-	7,000/-	Confirmed
5.	Transportation	3,000/-	3,000/-	Confirmed
6.	Medical expenses	33,500/-	33,500/-	Confirmed
7.	Damages to clothes	1,000/-	1,000/-	Confirmed
8.	Attendant charges	-	5,000/-	Granted
9.	Loss of amenities	-	5,000/-	Granted
	Total	Rs.1,14,000/-	Rs.1,38,500/-	enhanced by Rs.24,500/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,14,000/- is hereby enhanced to Rs.1,38,500/- 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 the necessary Court fee, if any on the enhanced amount of compensation. The 1st respondent 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 eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.3443 of 2007 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, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appeal is dismissed as against the 2nd respondent-Insurance Company. No costs.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

krk

To

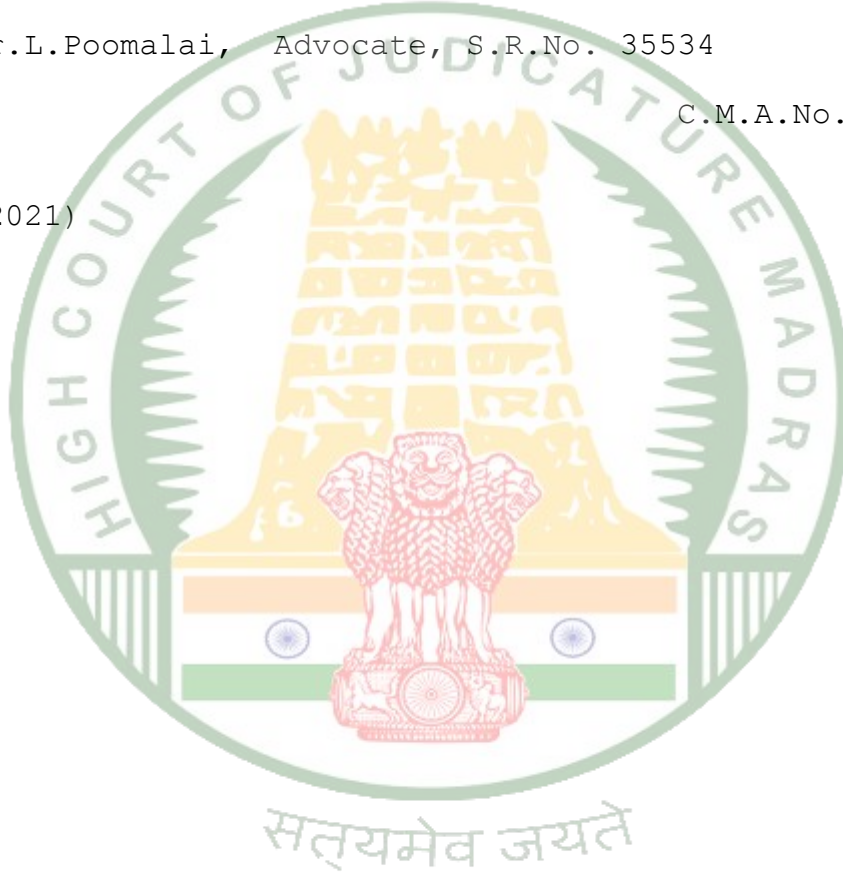
1.The III Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.L.Poomalai, Advocate, S.R.No. 35534

C.M.A.No.515 of 2013

SRA (CO)
GN (09/07/2021)



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