

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.641 of 2020

M.Nagappan

.. Appellant/Petitioner

Vs.

1.N.Ashok Raj

2.United India Insurance Company Limited,
Silingi Building, 4th Floor,
No.134, Greams Road,
Chennai - 600 006.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.02.2019 made in M.C.O.P.No.376 of 2016 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mr.J.Michael Visuvasam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 11.02.2019 made in M.C.O.P.No.376 of 2016 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.376 of 2016 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.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.10.2015.

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 JCB belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the JCB to pay a sum of Rs.3,79,500/- 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 in the accident the appellant sustained Proximal right fibula fracture, right tibial spine avulsion fracture and dislocation and popliteal artery injury. P.W.2/Doctor examined the appellant and certified that appellant suffered 40% disability and issued Ex.P11/disability certificate to that effect. The Tribunal without giving any valid reason reduced the percentage of disability to 20% and awarded compensation only for 20% disability. The Tribunal ought to have awarded compensation for 40% disability. The appellant was aged 38 years and was working as Lorry Driver in M/s.Safe Trans, Madhavaram, Chennai and was earning a sum of Rs.18,000/- per month but the Tribunal has awarded compensation towards loss of income only for one month. The appellant has taken treatment in the Parvathy Hospital as in-patient from 20.05.2015 to 04.11.2015 and a surgery was conducted on 26.10.2015. The compensation awarded by the Tribunal towards pain and sufferings, extra nourishment, attendant charges, transportation, loss of amenities and future medical expenses are meagre. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal reduced the percentage of disability to 20% on the ground that P.W.2/Doctor has not given the worksheets and guidelines for assessing the disability and he has not assessed the disability to the whole body. Hence, the appellant is not entitled to compensation for 40% disability. The appellant has not produced any material evidence to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, a sum of Rs.18,000/- awarded by the Tribunal towards loss of income is excessive. The Tribunal considering entire materials on record, has awarded a sum of Rs.3,79,500/- as compensation to the appellant, which is not meagre. 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 the entire materials on record.

8. It is the contention of the appellant that in the accident he sustained Proximal right fibula fracture, right tibial spine avulsion fracture and dislocation and popliteal artery injury.

To prove the nature of injuries and disability suffered by him, the appellant examined himself as P.W.1 and P.W.2/Doctor, who deposed about the nature of injuries and disability suffered by the appellant. P.W.2/Doctor examined the appellant and certified that appellant suffered 40% disability and issued Ex.P11/disability certificate to that effect. The 2nd respondent-Insurance Company did not let in any contra evidence to disprove the contention of P.W.2/Doctor and Ex.P11/disability certificate. The Tribunal reduced the percentage of disability to 20% on the ground that P.W.2/Doctor has not given the worksheets and guidelines for assessing the disability and he has not assessed the disability to the whole body. The reason given by the Tribunal for reducing the percentage of disability is not correct. The appellant is entitled to compensation for 40% disability. The accident occurred in the year 2015 and a sum of Rs.3,000/- awarded by the Tribunal per percentage of disability is meagre. This Court by judgment dated 09.01.2020 made in C.M.A.No.4870 of 2019 in the case of M/s.IFFCO TOKIO General Insurance Company Limited Vs. Venkatesh and another, fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2015. In view of the same, a sum of Rs.4,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,60,000/- (Rs.4,000/- X 40% disability).

9.It is the contention of the appellant that he was aged 38 years and was working as Lorry Driver in M/s.Safe Trans, Madhavaram, Chennai and was earning a sum of Rs.18,000/- per month at the time of accident. The 2nd respondent-Insurance Company did not let in any contra evidence to disprove the said contention. Therefore, the Tribunal considering he evidence of the appellant,awarded a sum of Rs.18,000/- towards loss of income for one month. Due the injuries and disability sustained by him, he would not have attended his work atleast for a period of five months. Therefore, the amount awarded by the Tribunal towards loss of income is enhanced to Rs.90,000/- [Rs.18,000/- X 5 months]. From the award passed by the Tribunal it is seen that the appellant has taken treatment in the Parvathy Hospital as in-patient from 20.05.2015 to 04.11.2015 and a surgery was conducted on 26.10.2015. Considering the nature of injuries and period of treatment taken by the Tribunal, the amounts awarded by the Tribunal towards attendant charges, loss of amenities , extra nourishment and damages to clothes are meagre and the same are enhanced to Rs.20,000/-, Rs.25,000/-, Rs.20,000/- and Rs.3,000/- respectively. The amounts awarded by the Tribunal towards pain and sufferings, transportation, medical expenses

and future medical expenses 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	60,000/-	1,60,000/-	Enhanced
2.	Pain and sufferings	40,000/-	40,000/-	Confirmed
3.	Loss of income	18,000/-	90,000/-	Enhanced
4.	Extra nourishment	7,500/-	20,000/-	Enhanced
5.	Transportation	10,000/-	10,000/-	Confirmed
6.	Attendant charges	3,200/-	20,000/-	Enhanced
7.	Loss of amenities	5,000/-	25,000/-	Enhanced
8.	Medical expenses	2,25,282/-	2,25,282/-	Confirmed
9.	Future medical expenses	10,000/-	10,000/-	Confirmed
10.	Damages to clothes	500/-	3,000/-	Enhanced
	Total	Rs.3,79,482/- rounded off to Rs.3,79,500/-	Rs.6,03,282/- rounded off to Rs.6,03,300/-	enhanced by Rs.2,23,800/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,79,500/- is hereby enhanced to Rs.6,03,300/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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, to the credit of M.C.O.P.No.376 of 2016 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 appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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

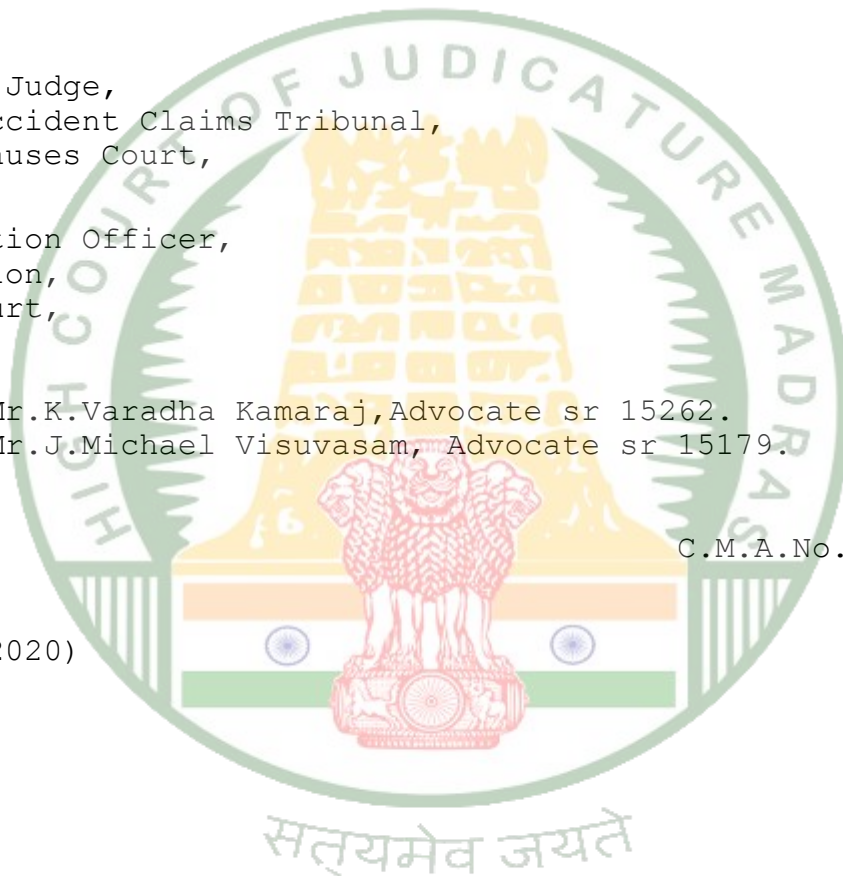
2.The Section Officer,
VR Section,
High Court,
Madras.

+1 CC to Mr.K.Varadha Kamaraj,Advocate sr 15262.

+1 CC to Mr.J.Michael Visuvasam, Advocate sr 15179.

C.M.A.No.641 of 2020

PA(CO)
SP(03/11/2020)



WEB COPY