

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2764 of 2016

Chandrasekaran

..Appellant/Petitioner/Claimant

Vs.

1.M/s.Greenply Industries Ltd.,
New No.517, Old No.275,
Nehru Timber Market, Synderhams Road,
Choolai, Chennai - 600 112.

2.The Oriental Insurance Co. Ltd.,
Third Party claims cell,
"Oriental House" II - Floor,
Old No.115, New No.216,
Prakasam Salai,
Broadway, Chennai - 600 108. ...Respondent/Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.03.2016 made in M.C.O.P.No.2529 of 2013 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.K.V.Muthu Visakan
For R2 : Mr.S.Arunkumar
R1 : Exparte

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 21.03.2016 made in M.C.O.P.No.2529 of 2013 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.2529 of 2013 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 25.03.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the car belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.6,85,000/- 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/claimant contended that the appellant was aged 45 years at the time of accident and was earning a sum of Rs.30,000/- per month by working as Professor & Campus Manager in WLC College, Bangalore. The Tribunal without considering the same, has awarded a sum of Rs.26,000/- as compensation towards loss of earning for the period of treatment. P.W.2/Doctor has assessed the disability of the appellant as 60% and the Tribunal ought to have awarded compensation towards loss of earning power. The Tribunal has not awarded any amount towards future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not produced any document to prove his avocation and income. In the absence of any material evidence, the Tribunal has rightly fixed the monthly income of the appellant at Rs.6,500/-. The Tribunal after considering the materials available on record, has awarded just compensation. 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 all the materials available on record.

8.It is the contention of the appellant that he was aged 45 years at the time of accident and was earning a sum of Rs.30,000/- per month by working as Professor & Campus Manager in WLC College, Bangalore. The appellant failed to prove 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/- as monthly income of the appellant and awarded a sum of Rs.26,000/- towards loss of earning for a period of four months, which is meagre. The appellant is a professor and Campus Manager. The accident is of the year 2013

and the monthly income fixed by the Tribunal is meagre. Considering the date of accident and qualification of the appellant, a sum of Rs.12,000/- is fixed as monthly income of the appellant. Due to the injuries sustained by the appellant in the accident, he would not have attended his work atleast for a period of six months. Therefore, the appellant is entitled to a sum of Rs.72,000/- (Rs.12,000/- X 6) towards loss of earning for six months. The appellant sustained type 6 schatzker fracture left tibial plateau and long plate and screw was fixed for bone union. At present, left knee joint is swollen and ugly scar over the left knee for bone union, bone grafting was done and therefore, walking and standing capacity of the appellant is reduced and restricted by 30 degrees. He contended that he cannot bend the left knee. P.W.2/Doctor, who was examined to prove the injuries sustained by the appellant, assessed the disability of the appellant as 60%. The Tribunal has accepted the same and awarded a sum of Rs.1,80,000/- (Rs.3,000/- X 60%) towards disability at the rate of Rs.3,000/- per percentage of disability, which is proper. The appellant has taken treatment as in-patient in Apollo hospital, Chennai, from 25.03.2013 to 28.03.2013 and subsequently, taken treatment as in-patient in the hospital from 02.04.2013 to 11.04.2013. The Tribunal has awarded only a sum of Rs.18,000/- towards attendant charges. Considering the nature of injuries and period of treatment, the amount granted by the Tribunal is enhanced to Rs.25,000/- towards attendant charges.

9. From the materials on record, it is seen that the appellant has undergone surgery and long plate and screw were fixed for bone union. The Tribunal has not awarded any amount towards future medical expenses. The appellant is entitled to a sum of Rs.25,000/- towards future medical expenses. The amounts awarded by the Tribunal under 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.	Transportation, nourishing food and miscellaneous expenditures	75,000	75,000	Confirmed
2.	Medical expenses	2,10,000	2,10,000	Confirmed

3.	Attendant charges	18,000	25,000	Enhanced
4.	Disability	1,80,000	1,80,000	Confirmed
5.	Loss of earning during the period of treatment	26,000	72,000	Enhanced
6.	Loss of earning power	26,000	26,000	Confirmed
7.	Damages for pain, suffering and trauma	1,00,000	1,00,000	Confirmed
8.	Loss of amenities	50,000	50,000	Confirmed
9.	Future medical expenses	-	25,000	Granted
	Total	Rs.6,85,000	Rs.7,63,000	Enhanced by /- Rs.78,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,85,000/- is hereby enhanced to Rs.7,63,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. 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/claimant 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

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To

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

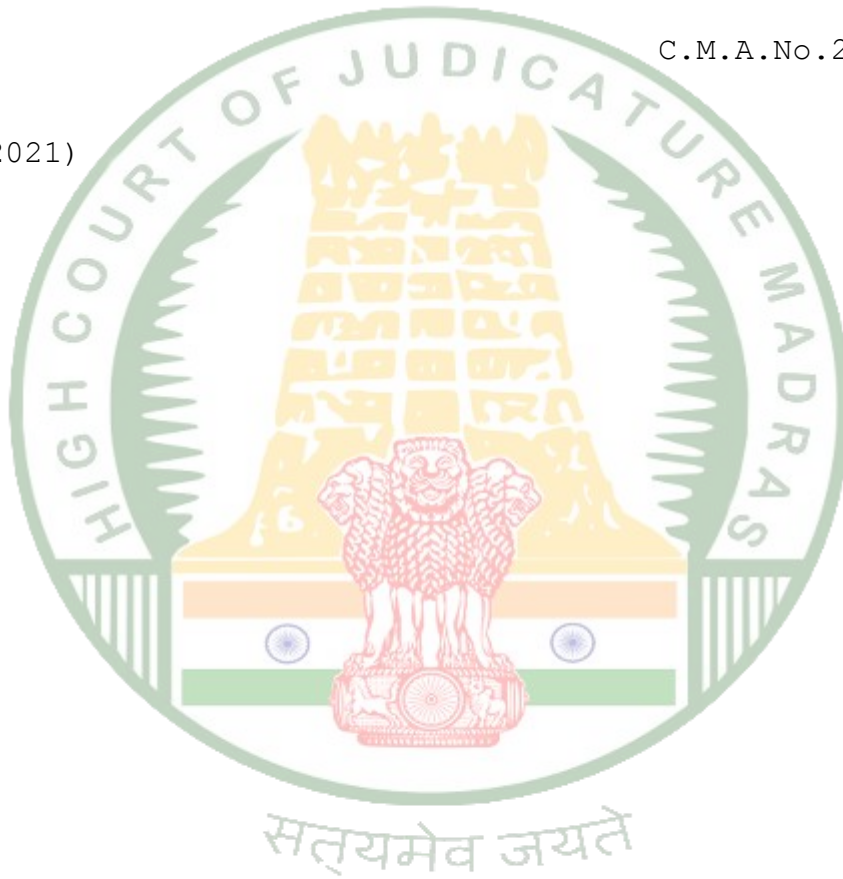
2.The Section Officer
V.R.Section
High Court, Chennai.

+1 CC to Mr.S.Arunkumar, Advocate sr 5006.

+1 CC to Mr.K.V.Muthuvisakan, Advocate sr 4926.

C.M.A.No.2764 of 2016

SV(CO)
SP(22/01/2021)



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