

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2785 of 2016

Ramalingam

.. Appellant/petitioner

Vs.

1.S.Govindan

2.ICICI Lombard General Insurance Co. Ltd.,

Chottabhai Centre,

No.140, Nungambakkam High Road,

Chennai 34.

.. Respondents/Respondents

(1st respondent remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 08.06.2016 made in M.C.O.P.No.4220 of 2013 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.K.V.Muthu Visakan

For Respondents : Mr.K.K.Ramakrishnan for R2
R1 Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 08.06.2016 made in M.C.O.P.No.4220 of 2013 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.4220 of 2013 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.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 22.03.2013.

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 car belonging to the first respondent and directed the second respondent, as insurer of the vehicle to pay a sum of Rs.3,57,300/- 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 the appellant suffered fracture in the both bone left leg and head injury in the accident. Due to the fracture, he could not continue his work as earlier. The appellant examined P.W.2/Doctor was examined to prove the nature of injuries and disability suffered by the appellant who assessed the disability as 50%. The Tribunal has reduced the percentage of disability to 45% and awarded a meagre sum of Rs.1,35,000,- towards disability at the rate of Rs.3,000/- per percentage. The Tribunal failed to award any amount towards loss of amenities and loss of earning power and the compensation 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 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 second respondent-Insurance Company and perused the entire materials on record.

8.It is the contention of the appellant that he suffered fracture in the both bone left leg and head injury in the accident. To substantiate the injuries sustained by him, he has examined Dr.K.J.Mathiazhagan as P.W.2, who assessed the disability of the appellant as 50% and Ex.P6/disability certificate was marked to prove the same. But the Tribunal reduced the percentage of disability assessed by P.W.2/Doctor to 45% holding that the percentage of disability assessed by P.W.2 is on the higher side, which is not proper. The amount per percentage of disability fixed by the Tribunal is proper. Considering the nature of injuries sustained by the appellant along with the evidence of P.W.2, the appellant is entitled to

compensation for 50% disability at the rate of Rs.3,000/- per percentage of disability.

9. Accordingly, a sum of Rs.1,50,000/- (Rs.3,000/- X 50%) is awarded towards permanent disability. According to the appellant, he was working as a driver and was earning a sum of Rs.10,000/- per month. To prove the avocation and income of the appellant, he has produced the driving license / Ex.P3. The Tribunal has fixed the income of the appellant at Rs.333/- per day and awarded a sum of Rs.75,924/- (Rs.333/- x 228) towards loss of income for 228 days. The accident is of the year 2013 and the income fixed by the Tribunal is meagre. A sum of Rs.10,000/- is fixed as monthly income of the appellant. Due to the fracture, the appellant would not have attended his work atleast for a period of twelve months. Therefore, the appellant is entitled to a sum of Rs.1,20,000/- (Rs.10,000/- X 12) towards loss of income for twelve months. According to the appellant, he has taken treatment in the hospital as in-patient from 23.03.2013 to 11.05.2013 for merely 48 days. The Tribunal has awarded a meagre sum of Rs.10,368/- towards attendant charges and Rs.1,000/- towards damage to clothes. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.50,000/- and Rs.2,000/- are awarded towards attendant charges and damage to clothes. The Tribunal has not awarded any amount towards loss of amenities and the appellant is entitled to a sum of Rs.20,000/- for the same. The amounts granted by the Tribunal under the other heads are just and reasonable and hence, they 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.	Loss of income	75,924/-	1,20,000/-	enhanced
2.	Attendant charges	10,368/-	50,000/-	enhanced
3.	Extra nourishment	50,000/-	50,000/-	confirmed
4.	Transportation	15,000/-	15,000/-	confirmed
5.	Damage to cloth	1,000/-	2,000/-	enhanced
6.	Pain & sufferings	50,000/-	50,000/-	confirmed

7.	Damages for mental & physical shock	20,000/-	20,000/-	confirmed
8.	Disability	1,35,000/-	1,50,000/-	enhanced
9.	Loss of amenities	-	20,000/-	granted
	Total	Rs.3,57,292/-	Rs.4,77,000/-	enhanced by Rs.1,19,700/-
	Rounded off to	Rs.3,57,300/-		

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,57,300/- is hereby enhanced to Rs.4,77,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The second 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 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 by making necessary applications before the Tribunal. No costs.

-s/d-

Assistant Registrar

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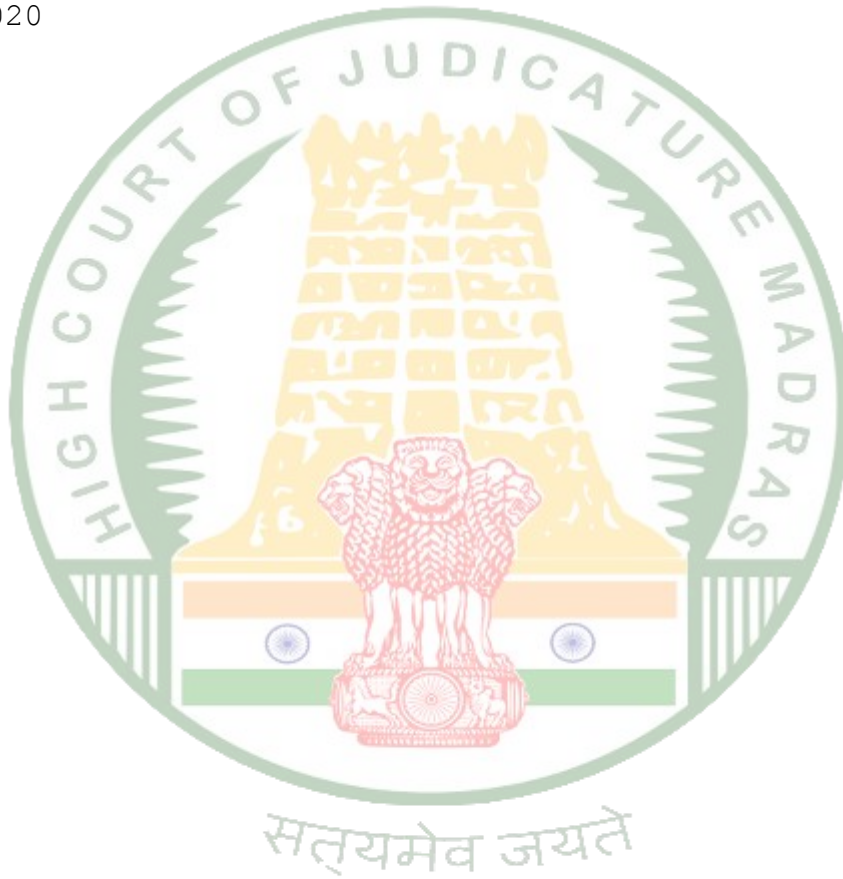
1. The III Judge Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

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

+1 cc to Mr.K.V.Muthuvisakan Advocate sr4012

C.M.A.No.2785 of 2016

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