

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.764 of 2020

S.Kirubakaran

.. Appellant/Petitioner

Vs.

1.S.M.R.Warehouse and Transports
No.1/153A, Officers line
Contonment Pallavaram
Chennai-600 043.

2.National Insurance Co. Ltd.
Motor Third Party Claims Office
No.46, III floor
Moore street, Chennai-600 001.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 15.11.2019 made in M.C.O.P.No.1963 of 2018 on the file of Motor Accident Claims Tribunal, Small Causes Court No.V, Chennai.

For Appellant : Mr.R.Nalliyappan

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 15.11.2019 made in M.C.O.P.No.1963 of 2018 on the file of Motor Accident Claims Tribunal, Small Causes Court No.V, Chennai.

2.The appellant is claimant in M.C.O.P.No.1963 of 2018 on the file of Motor Accident Claims Tribunal, Small Causes Court No.V, Chennai. He filed the said claim petition claiming a sum

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of Rs.12,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.03.2018.

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 van belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said van, to pay a sum of Rs.4,97,200/- 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 sustained fracture over right leg, crush injury on his right foot and contusion over chest. The appellant has taken treatment as in-patient in Miot International hospital from 01.03.2018 to 27.03.2018, underwent four surgeries and subsequently, he has taken treatment on 08.05.2018. The Doctor has assessed the disability of the appellant as 50% and marked the disability certificate as Ex.P4 to prove the injuries. The Tribunal without any valid reason, reduced the disability to 30% and awarded only a sum of Rs.90,000/- (Rs.3,000/- X 30%) towards disability at the rate of Rs.3,000/- per percentage of disability. The appellant was working as TSCL in Post Office and was earning a sum of Rs.34,000/- per month at the time of accident. Due to the injuries, the appellant could not do the work as he was doing earlier. The Tribunal has not awarded any compensation towards loss of income. The Tribunal ought to have adopted multiplier method to award compensation towards disability. 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 is working in Central Government and hence, he would not have incurred loss of income during the treatment period. The appellant has not proved that he suffered functional disability and there is loss of earning capacity. Therefore, the appellant is not entitled to compensation by adopting multiplier method. 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.

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8. It is the contention of the appellant that he sustained fracture over right leg, crush injury on his right foot and contusion over chest. The Doctor has assessed the disability of the appellant as 50% and marked the disability certificate as Ex.P4 to prove the injuries. The Tribunal rejected Ex.P4/disability certificate on the ground that the author of Ex.P4 was not examined and the appellant has not examined the Doctor, who treated him, reduced the disability to 30% and awarded a sum of Rs.90,000/- (Rs.3,000/- X 30%) towards disability at the rate of Rs.3,000/- per percentage of disability. The reason assigned by the Tribunal for reducing the percentage of disability is not correct. The respondents did not let in any oral and documentary evidence to disprove the disability assessed by the Doctor and the disability certificate marked as Ex.P4. Therefore, the appellant is entitled to compensation for 40% disability, as there is no contra evidence. 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. But the amount 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 2020 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 2018. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.2,00,000/- (Rs.5,000/- X 40%).

8(i).According to the appellant, he has taken treatment as in-patient in Miot International hospital from 01.03.2018 to 27.03.2018, underwent four surgeries and subsequently, he has taken treatment on 08.05.2018 and he lost his income during the treatment period. The appellant has contended that he was working as TSCL in Post Office and was earning a sum of Rs.34,000/- per month at the time of accident. He has marked Exs.P14 & P15/Identity Card and salary slip respectively to prove his avocation and income. The Tribunal has not awarded any compensation towards loss of income on the ground that the appellant as a Central Government employee, might have taken medical leave during treatment period and that he has not proved that he incurred loss of pay during treatment period. The said reason is proper and the same does not warrant any interference by this Court. A sum of Rs.11,200/- awarded by the Tribunal

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towards attendant charges is meagre. Considering the nature of injuries and period of treatment taken by the appellant, the compensation awarded by the Tribunal towards attendant charges is hereby enhanced to Rs.50,000/-. A sum of Rs.1,000/- awarded by the Tribunal towards damage to clothes is meagre and the same is hereby enhanced to Rs.3,000/-. 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.	Pain & suffering	50,000	50,000	Confirmed
2.	Extra nourishment	50,000	50,000	Confirmed
3.	Disability	90,000	2,00,000	Enhanced
4.	Loss of amenities	50,000	50,000	Confirmed
5.	Attendant charges	11,200	50,000	Enhanced
6.	Medical expenses	2,44,902	2,44,902	Confirmed
7.	Damage to clothes	1,000	3,000	Enhanced
	Total	4,97,102 rounded off to 4,97,200	6,47,902 rounded off to 6,48,000	Enhanced by Rs.1,50,800 /-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,97,200/- is hereby enhanced to Rs.6,48,000/- 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. 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,

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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.

Sd/-

Assistant Registrar (CS-III-MDU)

//True Copy//

Sub Assistant Registrar

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To

The V Judge

The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

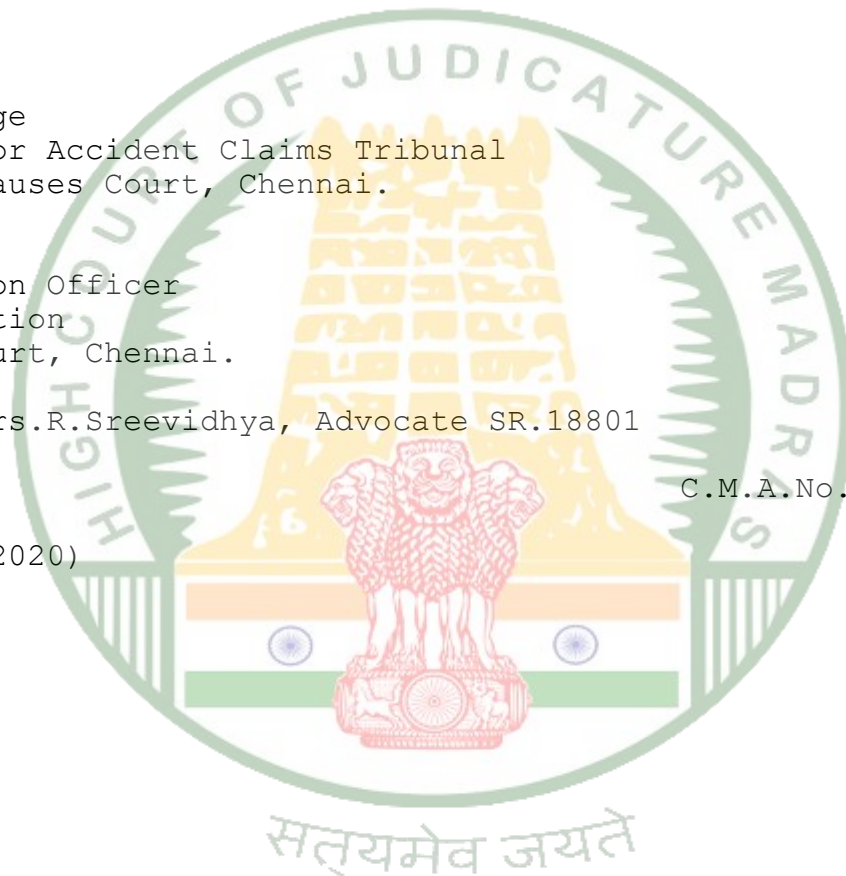
Copy to:

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

+1cc to Mrs.R.Sreevidhya, Advocate SR.18801

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