

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4765 of 2019

Vairamuthu

..Appellant/Petitioner

Vs.

1.S.Parthasarathy

2.Bharti Axa General Insurance, Co. Ltd.,

''Metro Plaza,'' No.162,

Anna Salai, Chennai-600 002

..Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.10.2018 made in M.C.O.P.No.6337 of 2014 on the file of Special Sub Court No.1, Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

For Appellant: Mr.C.Richard Sureshkumar

For R2 : Ms.K.Poomalai

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 30.10.2018 made in M.C.O.P.No.6337 of 2014 on the file of Special Sub Court No.1, Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

2.The appellant is claimant in M.C.O.P.No. 6337 of 2014 on the file of Special Sub Court, Motor Accident Claims Tribunal, Court of Small Causes, Chennai. He filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 04.11.2013.

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 bearing Registration No.TN-67-AJ-7119 belonging to the 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.6,97,250/- 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 fractures and other multiple injuries all over the body. The appellant has taken first aid treatment in Government Hospital and Bharani Hospital, Villupuram. Subsequently, he was admitted in Miot Hospital and taken treatment as in-patient for 17 days in two spells and continued his treatment as out-patient for prolonged period. The appellant underwent surgery and plate and screws were fixed. Due to the injuries the appellant could not stand for long time, walk and continue his work as he was doing earlier. The appellant was referred to Medical Board. The Medical Board examined the appellant and assessed the disability as 60%. The Tribunal without considering the same has awarded meagre amounts for disability. The appellant was the proprietor of Sri Murugan Sweet Stall and was earning a sum of Rs.20,000/- per month. Due to the permanent disability, the appellant is unable to continue his business and lost his earning capacity. Hence, the Tribunal ought to have adopted multiplier method for calculating loss of earning capacity. The Tribunal ought to have considered 40% enhancement towards future prospects since the appellant was aged only 28 years at the time of accident. The amounts awarded 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 both oral and documentary evidence in proper perspective, awarded compensation under different heads. 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 2nd respondent/Insurance Company and perused all the materials available on record.

8. It is contention of the appellant that the appellant has sustained fractures and other multiple injuries all over the body in the accident. He was given first aid in Government Medical College Hospital, Villupuram and for further treatment he was admitted in Sri Bharani Hospital, Villupuram. On the same day he was admitted as in-patient in Miot Hospital, and has taken treatment as in-patient for 17 days in two spells. The

appellant was subjected to examination by Regional Medical Board who assessed the disability of the appellant as 60% and issued disability certificate, Ex.C1. Considering the disability certificate marked as Ex.C1, the Tribunal has awarded a sum of Rs.1,80,000/- (Rs.3,000/- x 60%) towards disability by awarding Rs.3000/- per percentage. It is the contention of the appellant that he is the proprietor of Sri Murugan Sweet Stall and was earning Rs.20,000/- per month and due to the injuries he could not continue his work and lost income. The appellant has not proved the said contention that he suffered functional disability and lost his earning capacity. Hence, he is not entitled to compensation by applying multiplier method. To prove his avocation and income, he had not filed any document. In the absence of any material evidence, the Tribunal has fixed a sum of Rs.10,000/- per month as notional income of the appellant and awarded a sum of Rs.30,000/- (Rs.10,000/- x 3) towards loss of income. Considering nature of injuries and treatment taken, the amounts awarded by the Tribunal for loss of income is meagre. Due to injuries sustained in the accident, the appellant would not have worked for atleast eight months. The appellant is entitled to a sum of Rs.80,000/- (Rs.10,000/- x 8) as compensation towards loss of income for eight months. The appellant has taken treatment as in-patient for 17 days but the Tribunal has awarded only a sum of Rs.4,250/- towards attendant charges, which is very meagre. The amounts awarded by the Tribunal for extra nourishment and transportation are also meagre. Considering then nature of injuries and period of treatment, the amounts awarded by the Tribunal towards extra nourishment, transport to hospital and attendant charges are enhanced to Rs.30,000/-, Rs.15,000/- and Rs.20,000/- respectively. The amounts awarded by the Tribunal under other heads are just and reasonable and hence they are 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	1,80,000	1,80,000	Confirmed
2.	Pain and suffering	30,000	30,000	Confirmed
3.	Extra nourishment	15,000	30,000	Enhanced
4.	Transport to Hospital	5,000	15,000	Enhanced
5.	Hospital & Medical Expenses	3,83,000	3,83,000	Confirmed

6.	Medical Expenses	30,000	30,000	Confirmed
7.	Attendant charges	4,250	20,000	Enhanced
8.	Loss of Earnings	30,000	80,000	Enhanced
9.	Loss of Future prospects	20,000	20000	Confirmed
	Total	Rs.6,97,250/-	Rs.7,88,000/-	Enhanced by Rs.90,750/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,97,250/- is hereby enhanced to Rs.7,88,000/- 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 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 VIII)

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सत्यमेव जयते

Sub Assistant Registrar

vsn

To

1. The Special Sub Judge No.1
Court of Small Causes,
The Motor Accident Claims Tribunal,
Chennai.

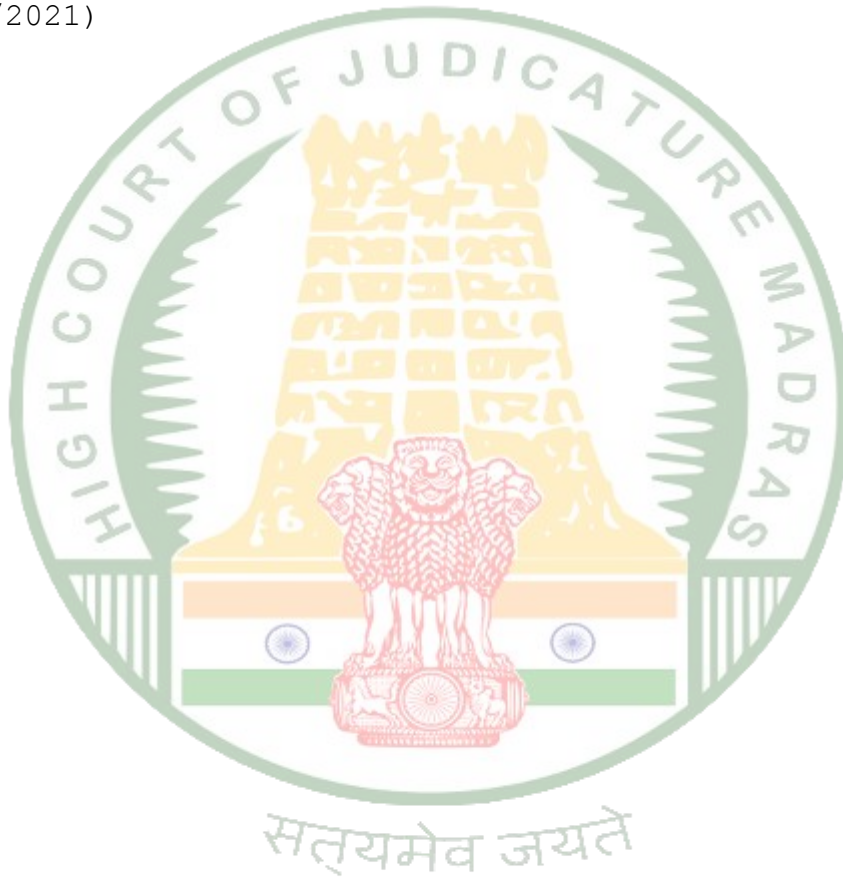
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2.The Section Officer
V.R.Section
High Court, Chennai.

+1 cc to Mr.C.Richard Sureshkumar, Advocate Sr.No. 14415
+1 cc to Mr.K.Poomalai, Advocate Sr.No. 13815

C.M.A.No.4765 of 2019

GP (CO)
RMP (22/04/2021)



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