

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.2640 of 2019

R. Gopi,
S/o. Raju,
No.28, V.V.Koil Street,
Dhasamahan, Kosapet,
Chennai-600 012.

.. Appellant

Vs.

1. N. Amarnath Reddy,
No.27-33-18, Godavalli Street,
Krishna, Vijayawada – 520 002.

2. ICICI Lombard General Insurance
Co. Ltd.,
No.140, 3rd floor,
Nungambakkam High Road,
Nungambakkam, Chennai-600 034.
Now at “Harihant Plaza”,

1st Floor, No.84 & 85,
Walltax Road, Chennai-600 003.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree passed in M.C.O.P.No.8241 of 2013 dated 10.10.2018, on the file of VI Court, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr. A. Shanmugaraj

For Respondents : R-1 – exparte

Mr.R.Sreevidhya for R-2

JUDGMENT

Feeling aggrieved with the inadequate compensation awarded by the VI Judge, Small Causes Court, Motor Accident Claims Tribunal, Chennai in M.C.O.P. No.8241 of 2013 dated 10.10.2018, the claimant is before this Court by way of Civil Miscellaneous Appeal.

2. The brief facts leading to the filing of this Civil Miscellaneous Appeal is as follows :-

The Appellant/claimant is an Auto driver, on 29.06.2012, at about 04.30 a.m., while the petitioner was driving the auto bearing Regn. No.TN03D-2296 along the Ibrahim Salai from East to West direction, a lorry bearing Regn. No.AP16-TX 3765 owned by the 1st respondent and driven by its driver in a rash and negligent manner dashed on the back side of the auto, wherein the appellant has sustained the following injury :-

“Comminuted # shaft of middle 1/3 R tibia undisplaced”

The appellant said to have taken treatment conservatively. Subsequently, the

appellant had obtained a disability certificate from the Assistant Professor of Orthopaedics, Rajiv Gandhi Government General Hospital, wherein the disability was assessed at 45%, which has been marked as Ex.P7 and for the disability sustained by the appellant, the Government of Tamil Nadu, Department of Welfare of the Differently Abled Persons has also issued a certificate, which was marked as Ex.P8. According to the appellant, in the said accident, he has suffered a permanent disability and he was not able to perform all the duties and drive auto as before the accident, which resulted in loss of future earning capacity. Hence, he has filed the claim petition seeking for compensation of Rs.6 lakhs.

3. In order to substantiate his case, the appellant has examined himself as P.W.1 and marked 12 documents. No witnesses were examined on the side of the respondents and no exhibits were marked.

4. The Tribunal after considering material evidence has come to a conclusion that the appellant had suffered 30% of disability and awarded a compensation of Rs. 1,65,800/- as follows :-

(1)	Disability	Rs. 90,000/-
(2)	Pain and suffering	Rs. 25,000/-
(3)	Extra nourishment	Rs. 10,000/-
(4)	Transport to hospital	Rs. 5,000/-
(5)	Damages to clothes	Rs. 1,000/-
(6)	Attender charges	Rs. 1,800/-
(7)	Medical expenses	Rs. 5,000/-
(8)	Loss of income	Rs. 18,000/-
(9)	Loss of amenities	Rs. 10,000/-
	Total	Rs. 1,65,800/-

Being aggrieved with the same, the present Civil Miscellaneous Appeal has been filed seeking enhancement of compensation.

5. Mr. A. Shanmugaraj, learned counsel appearing for the appellant submitted that the appellant has suffered the disability of 45% and for the proof of the same, he has also produced the certificate obtained from the Assistant Professor of Orthopaedics, Rajiv Gandhi Government General Hospital, Chennai, without considering the same, the Tribunal has mechanically fixed the disability at 30% and awarded compensation only a sum of Rs.90,000/- towards disability. That apart, the daily income of the appellant was fixed at Rs.500/- and awarded only a sum of Rs.18,000/- towards loss of income during the period of treatment. According to the appellant, he was earning more than Rs.1000/- per day and he has taken

treatment for more than six months, however, the Tribunal had fixed the monthly income at Rs.9,000/- and awarded a sum of Rs.18,000/- towards loss of income. The learned counsel appearing for appellant would submit that the amount awarded for other heads are very low. Hence, seeking enhancement of compensation to the extent of Rs.6 lakhs.

6. The learned counsel appearing for appellant has also relied upon the judgment of this court reported in **2019 (1) TN MAC (DB)** in the matter of **R. Pushpa vs. Talari Parvathiah and another**, wherein the Division Bench has held that once the certificate issued by the Government Hospital assessing the disability and issues a certificate, unless a contra evidence is produced, the certificate can be accepted, which reads as follows :-

“5. The Tribunal has also not awarded any amount towards Future loss of earning capacity. The Disability Certificate issued by the K.K. Nagar Government Peripheral Hospital has been marked as Ex.P24 to prove that the permanent disability has been assessed at 70%. The Tribunal has arrived at the disability as 14.5%. The injuries suffered by the claimant are compound Grade II-B fracture in both bones in left leg with bone loss and Grade I fracture shaft of right

tibia and deformity. The Tribunal has chosen to reject Ex.P24 on the ground that it has been issued for the purpose of getting Government concession. We do not agree with the said approach of the Tribunal. Once the Government Hospital assesses the disability and issues a Certificate, unless contra evidence is produced to show that the disability assessed by the said hospital is not correct, the Tribunal cannot reject the same. We, therefore, conclude that the Tribunal was not right in rejecting Ex.P24, wherein the disability has been assessed at 70%."

7. Ms.R.Sreevidhya, learned counsel appearing for 2nd respondent/insurance company has vehemently opposed the appeal contending that the appellant was an auto driver and his salary was rightly fixed as Rs.500/- per day and after deducting the personal expenses, his monthly income was fixed as Rs.9,000/-. In order to prove the disability, except marking Ex.P7 certificate, the Doctor, who has issued the certificate was not examined, and absolutely, there is no other evidence regarding the nature of disability suffered by the appellant, no evidence available to show that the appellant was not able to perform any of his duties as done before

the accident. Considering all those circumstances, the Tribunal has rightly awarded a sum of Rs.1,65,800/- and there is no reason to find fault with the order of the Tribunal and there is no infirmity in it.

8. I have considered the rival submissions and also perused the records carefully.

9. From the materials available on record, it could be seen that there is no serious dispute raised regarding the accident and liability of the insurance company to pay the compensation. The main dispute regards to the disability suffered by the appellant. According to him, he has suffered permanent disability to the extent of 45% and he has also obtained a certificate from the Assistant Professor of Orthopaedics, Rajiv Gandhi Government General Hospital, Chennai, which was marked as Ex.P7 and the Tribunal without considering the same has mechanically fixed the disability at 30%. On perusal of Ex.P7, it could be seen that the appellant has suffered a locomotor disability and suffered permanent disability of 45%. Admittedly, the Doctor, who has issued the certificate was not examined. That apart, a perusal of Ex.P5 and Ex.P6, the discharge summary issued by the Stanley Medical College and Hospital, Chennai would show that the appellant has taken

treatment for more than a week. It is stated that due to the accident, the appellant was not able to perform all the duties and drive auto as before the accident, and working on alternative days. That apart, he was not able to stand for long time, and he is having difficulty in climbing stairs and walking and it was not challenged in the cross-examination.

10. Considering the above circumstances, as the certificate issued by Rajiv Gandhi Government General Hospital, Chennai was not seriously disputed by the respondent, which cannot be disbelieved merely because, the Doctor, who has issued the certificate was not examined, the Tribunal has mechanically had fixed the disability at 30% without any reasons. Following the judgment of the Division Bench in ***R. Pushpa vs. Talari Parvathiah and another*** (as stated supra), I am of the considered view that the permanent disability should be fixed as 45% as per Ex.P7 certificate. The loss of future earning capacity on account of permanent disability is calculated at 45%, which comes to Rs.1,35,000/-. For the loss of income during the period of treatment, the appellant an auto driver and he is said to have bedridden for nearly six months, therefore, I am of the view that a sum of Rs.23,000/- can be awarded instead of Rs.18,000/-. In so far as other heads are concerned, the Tribunal has rightly awarded compensation and

hence, the same are hereby confirmed. Considering all those circumstances, the compensation awarded by the Tribunal is modified as follows :-

Sl. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)
(1)	Disability	90,000	1,35,000
(2)	Pain and suffering	25,000	25,000
(3)	Extra nourishment	10,000	10,000
(4)	Transport to hospital	5,000	5,000
(5)	Damages to clothes	1,000	1,000
(6)	Attender charges	1,800	1,800
(7)	Medical expenses	5,000	5,000
(8)	Loss of income	18,000	23,000
(9)	Loss of amenities	10,000	10,000
	Total	1,65,800	2,15,800

Thus, the petitioner is entitled to get a sum of Rs.50,000/- towards enhanced compensation.

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,65,800/- is enhanced to Rs.2,15,800/- together with interest at the rate of 7.5% per annum from the dated 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

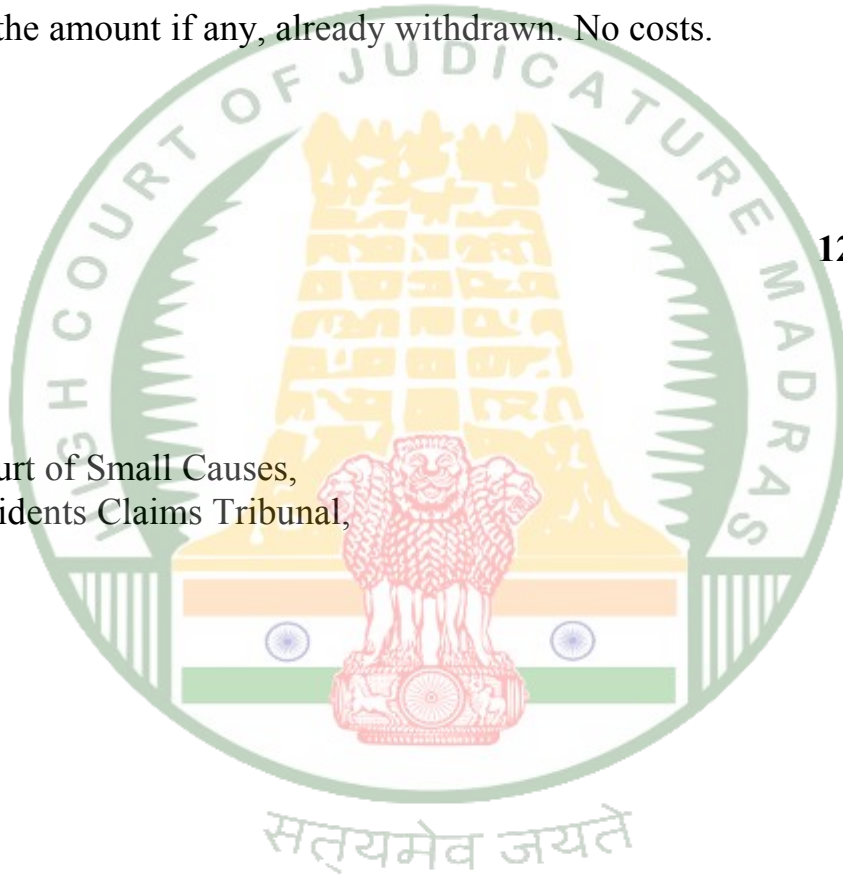
amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

12.10.2020

rpp

To

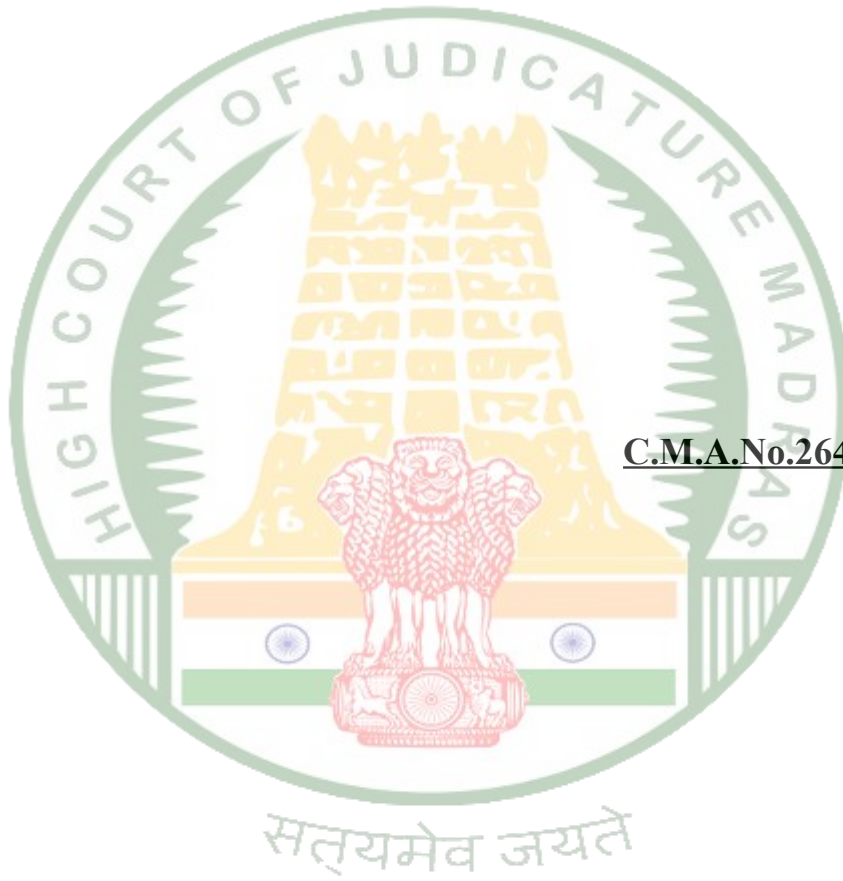
The VI Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.



WEB COPY

V.BHARATHIDASAN, J.

rpp



C.M.A.No.2640 of 2019

WEB COPY

12.10.2020