

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 3942 of 2019

Anandaprasath

.. Appellant /Claimant

Vs.

1.Sruthi Radhakrishnan
(R1 set exparte before the Tribunal)

2.ICICI Lombard General Insurance Co. Ltd.,
No. 140, Chottabhai Centre,
2nd Floor, Uttamar Gandhi Salai,
Nungambakkam,
Chennai 600 034.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 02.04.2018, made in M.C.O.P. No. 1707 of 2015, on the file of the Special Sub Court No.1, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. K.V. Muthu Visakan

For Respondents: M/s. K. Poomalai (for R2)

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 02.04.2018, made in M.C.O.P. No. 1707 of 2015, on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal), Small Causes Court, Chennai.

2.The appellant-claimant filed M.C.O.P. No. 1707 of 2015, on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal), Small Causes Court, Chennai, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 16.10.2014.

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 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.5,79,300/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 02.04.2018, made in M.C.O.P. No. 1707 of 2015, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended that in the accident, the appellant suffered fracture at Neck of Femur with fracture of Shaft of Femur with fracture of both bones left lower limb and grievous injuries and has taken treatment as in-patient in Rajiv Gandhi Government General Hospital from 16.10.2014 to 26.01.2015 and subsequently, at Vijaya Hospital, Vadapalani in two different spells viz., from 23.02.2015 to 06.03.2015 and 10.08.2015 to 26.08.2015. The Medical Board of the Rajiv Gandhi Government General Hospital examined the appellant and has assessed that the appellant suffered 60% permanent disability and issued disability certificate, marked as Ex.C1. The Tribunal without considering the materials produced by the appellant, erred in awarding only meagre amounts towards disability, attendant charges and loss of amenities. The Tribunal ought to have adopted multiplier method in granting compensation towards disability. At the time of accident, the appellant was working as Sanitary Worker at Corporation of Chennai and was earning a sum of Rs.16,000/- per month. The Tribunal without considering the salary certificate marked as Ex.P6 and the 11 months period of treatment taken by the appellant, fixed notional income and granted only meagre amounts towards loss of income. In any event, the total compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering all the materials on record in proper perspective, has granted compensation, which is not meagre. The appellant failed to prove that he suffered functional disability and lost earning capacity. Hence, he is not entitled to compensation by adopting multiplier method. In any event, the appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

8.It is the contention of the appellant that at the time of accident, he was a Sanitary Worker at Corporation of Chennai and was earning a sum of Rs.16,000/- per month. Due to the accident, he suffered fracture NOF (L) with fracture SOF (L) with fracture of both bones in left lower limb and has taken treatment as in-patient in Rajiv Gandhi Government General Hospital from 16.10.2014 to 26.01.2015 and subsequently, has taken treatment at Vijaya Hospital, Vadapalani in two different spells viz., from 23.02.2015 to 06.03.2015 and 10.08.2015 to 26.08.2015. The Medical Board of the Rajiv Gandhi Government General Hospital has assessed that the appellant suffered 60% permanent disability and issued disability certificate, marked as Ex.C1. The Tribunal considering the said materials on record, has awarded compensation towards disability at the rate of Rs.3,000/- per percentage for 60% disability. This Court by judgment dated 09.01.2020 made in C.M.A. No. 4870 of 2019 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 2014. In view of the same, a sum of Rs.4,000/- is awarded per percentage of disability. Hence, the compensation granted by the Tribunal towards disability is enhanced to Rs.2,40,000/- [Rs.4,000/- x 60% disability]. The appellant has not proved that he suffered functional disability. Hence, he is not entitled to compensation by adopting multiplier method. Considering the period of treatment taken and the nature of injuries suffered by the appellant, the amounts of Rs.50,000/-, Rs.10,000/-, Rs.30,000/-, Rs.33,000/- and Rs.30,000/- granted by the Tribunal towards pain and suffering, transportation, extra nourishment, attendant charges and loss of future prospects are meagre and hence, the same are enhanced to Rs.60,000/-, Rs.25,000/-, Rs.60,000/-, Rs.75,000/- and Rs.60,000/- respectively.

9.The appellant claimed a sum of Rs.2,46,943/- towards medical expenses and produced Ex.P5-medical bills to prove the same. The Tribunal having accepted Ex.P5 series, reduced the bill amount by Rs.60,740/- on the ground that there is no revenue stamp in the bills. The said reasoning given by the Tribunal is not correct. The appellant is entitled to the entire amount of Rs.2,46,943/-, incurred towards medical expenses. Hence, the amount awarded by the Tribunal towards medical expenses is enhanced to Rs.2,46,943/-. The Tribunal has not awarded any amount towards loss of amenities. Considering the nature of injuries, disability and period of treatment taken, a sum of Rs.50,000/- is awarded towards loss of amenities. The amount awarded by the Tribunal towards loss

of earnings is just and reasonable and hence, the same is 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/-	2,40,000/-	Enhanced
2.	Pain and suffering	50,000/-	60,000/-	Enhanced
3.	Medical expenses	1,86,203/-	2,46,943/-	Enhanced
4.	Attendant charges	33,000/-	75,000/-	Enhanced
5.	Transport to Hospital	10,000/-	25,000/-	Enhanced
6.	Loss of earnings	60,000/-	60,000/-	Confirmed
7.	Loss of future prospects	30,000/-	60,000/-	Enhanced
8.	Extra nourishment	30,000/-	60,000/-	Enhanced
9.	Loss of amenities	-	50,000/-	Granted
	Total	5,79,203/- rounded off to 5,79,300/-	8,76,943/- rounded off to 8,77,000	Enhanced by Rs.2,97,700/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.5,79,300/- is enhanced to Rs.8,77,000/- along with interest and costs. The 2nd respondent is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No. 1707 of 2015. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by

filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.2,97,700/-. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Special Subordinate Judge No.1,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

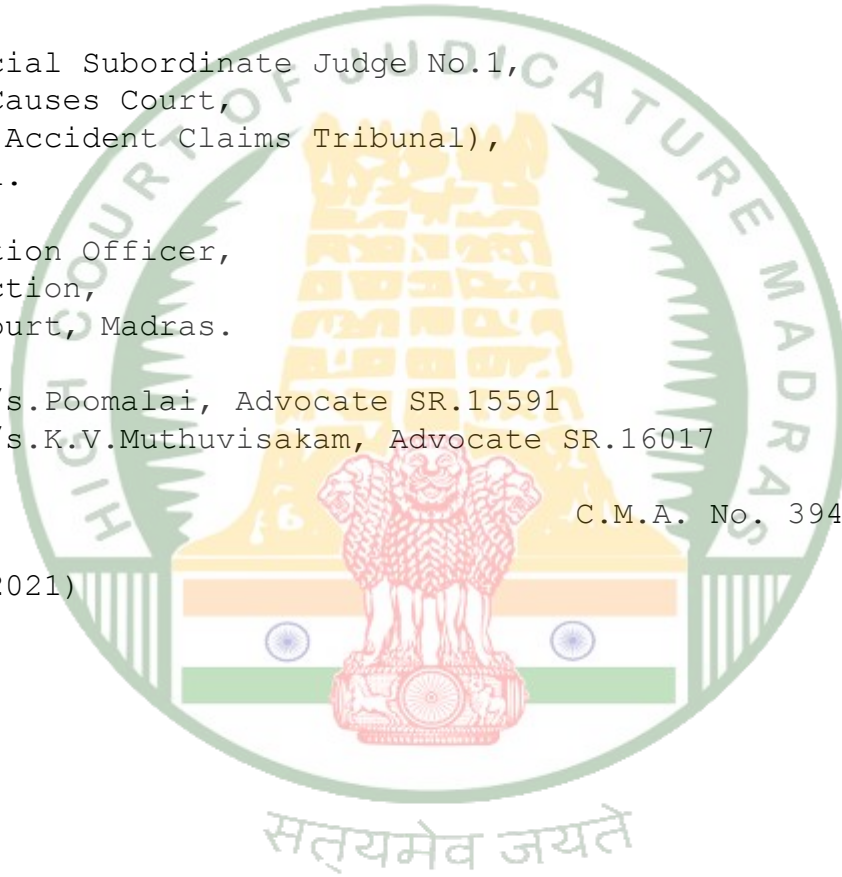
2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to M/s.Poomalai, Advocate SR.15591

+1cc to M/s.K.V.Muthuvisakam, Advocate SR.16017

C.M.A. No. 3942 of 2019

MG(CO)
CB(04/01/2021)



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