

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.315 of 2018

Sreenivasan .. Appellant/ Petitioner

Vs.

1.J.K.Sharma

2.Oriental Insurance Company Ltd.,
No.34, Cannaught circle
New Delhi-110 001. .. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.02.2009 made in M.C.O.P.No.99 of 2007 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Krishnagiri.

For Appellant : Mr.V.Sekar

For R1 : Mr.B.Singaravelu

For R2 : Mr.J.Chandran

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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 06.02.2009 made in M.C.O.P.No.99 of 2007 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Krishnagiri.

2.The appellant is claimant in M.C.O.P.No.99 of 2007 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Krishnagiri. He filed the said claim petition claiming a sum of Rs.12,00,000/- as compensation for the injuries sustained by him in the accident that took place on 20.08.2006.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the goods vehicle belonging to the 1st respondent and directed the 1st respondent, owner of the vehicle as well as the 2nd respondent/Insurance Company being insurer of the said vehicle to jointly and severally pay a sum of Rs.2,19,737/- 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/claimant contended that the appellant has lost his sense of smell and on that account, P.W.2/Dr.Govindaraj has assessed the disability of the appellant as 20% and issued Ex.P7/disability certificate. Further, the appellant has sustained fracture on his right tibia and femur and underwent surgery. P.W.3/Dr.T.V.Gandhi has assessed the disability of the appellant as 50%. The Tribunal without considering the evidence of P.W.2 and P.W.3, has reduced the percentage of disability to 35% and awarded a sum of Rs.70,000/- towards disability, which is meagre. Due to the fracture, steel and screws were implanted and the Tribunal has not awarded any amount towards future medical expenses for removal of implants. The appellant took treatment as in-patient in the hospital from 21.08.2006 to 21.09.2006 and subsequently from 14.12.2006 to 18.12.2006. The Tribunal has not awarded any amount towards attendant charges. 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 Tribunal has reduced the percentage of disability from 50% to 35% on the ground that the disability assessed by P.W.3/Doctor is on the higher side. 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 respondents and perused all the materials available on record.

8. It is the contention of the appellant that he sustained fracture on his right tibia and femur and underwent surgery. He has examined Dr. T.V. Gandhi as P.W.3, who assessed the disability of the appellant as 50% and Ex.P8/disability certificate was marked to prove the same. Due to the injuries, the appellant has lost his sense of smell. P.W.2/Dr. Govindaraj was examined, who assessed the disability of the appellant as 20% and Ex.P7/disability certificate was marked to prove the same. The Tribunal has rejected the evidence of P.W.2 on the ground that due to loss of sense of smell, there was no loss of income for the appellant. Hence, the Tribunal reduced the percentage of disability assessed by P.W.3/Doctor to 35% holding that the percentage of disability assessed by P.W.3 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 coupled with the evidence of P.W.3, the appellant is entitled to compensation for 50% disability at the rate of Rs.2,000/- per percentage of disability. Accordingly, a sum of Rs.1,00,000/- (Rs.2,000/- X 50%) is awarded towards permanent disability.

9. According to the appellant, he was aged 26 years at the time of accident and was earning a sum of Rs.6,000/- per month by working as a lorry cleaner as well as doing agriculture. The appellant failed to prove the same. Hence, the Tribunal fixed a sum of Rs.3,000/- as monthly income of the appellant and awarded a sum of Rs.3,000/- towards loss of income for a period of one month. The accident is of the year 2006 and the monthly income fixed by the Tribunal is meagre. A sum of Rs.6,000/- is fixed as monthly income of the appellant. Due to the fracture, the appellant would not have attended his work at least for a period of six months. Therefore, the appellant is entitled to a sum of Rs.36,000/- (Rs.6,000/- X 6) towards loss of income for six months. According to the appellant, he took treatment as in-patient in the hospital from 21.08.2006 to 21.09.2006 and subsequently from 14.12.2006 to 18.12.2006. The Tribunal has not awarded any amount towards attendant charges. Considering the nature of injuries and period of treatment taken by the appellant, this Court awards a sum of Rs.10,000/- towards attendant charges. The amounts awarded by the Tribunal towards transportation and extra nourishment are meagre and hence, the same are enhanced to Rs.5,000/- and Rs.10,000/- respectively. The Tribunal has not awarded any amount towards loss of amenities. This Court awards a sum of Rs.10,000/-

towards loss of amenities. The appellant has not produced any document to show that he is now taking treatment for his injuries and therefore, the appellant is not entitled any amount towards future medical expenses. The amounts awarded by the Tribunal under 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.	Disability	70,000	1,00,000	Enhanced
2.	Grievous Injuries	75,000	75,000	Confirmed
3.	Pain and suffering	10,000	10,000	Confirmed
4.	Mental agony	5,000	5,000	Confirmed
5.	Extra nourishment	3,000	10,000	Enhanced
6.	Transportation	2,000	5,000	Enhanced
7.	Loss of income	3,000	36,000	Enhanced
8.	Medical bills	51,737	51,737	Confirmed
9.	Attendant charges	-	10,000	Granted
10.	Loss of amenities	-	10,000	Granted
	Total	2,19,737	3,12,737	Enhanced by Rs.93,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,19,737/- is hereby enhanced to Rs.3,12,737/- 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 respondents 1 & 2 are directed to jointly and severally 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. No costs.

Sd/-
Assistant Registrar(Ad I)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate
The Motor Accident Claims Tribunal
Krishnagiri.

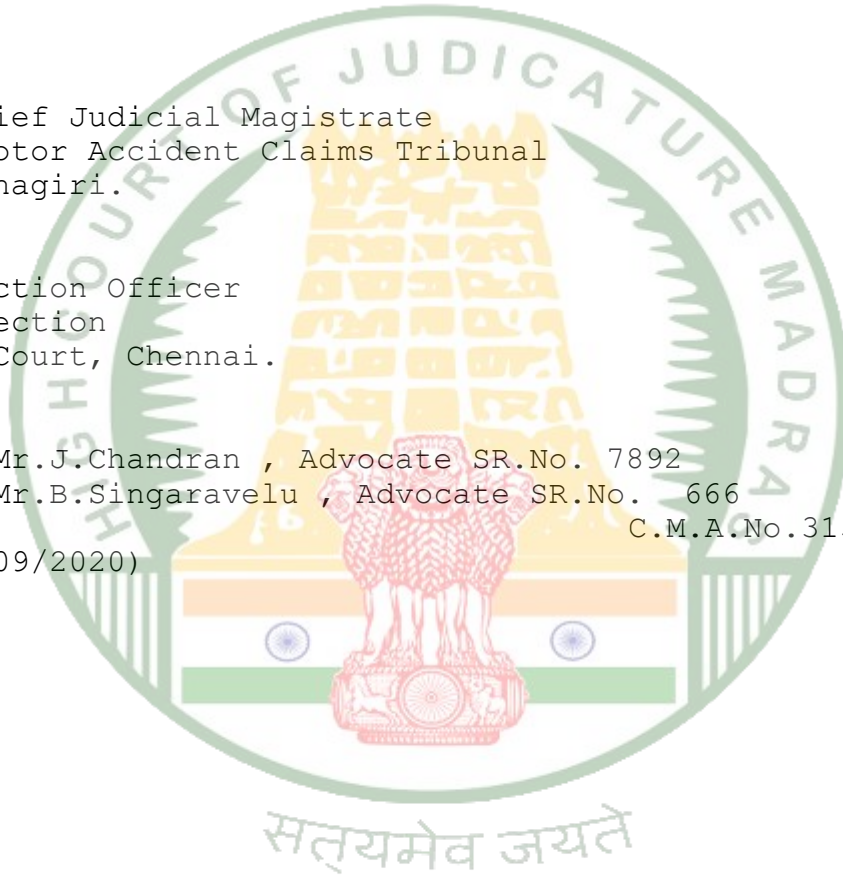
2.The Section Officer
V.R.Section
High Court, Chennai.

+1cc to Mr.J.Chandran , Advocate SR.No. 7892

+1cc to Mr.B.Singaravelu , Advocate SR.No. 666

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A.SK(21/09/2020)



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