

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 3549 of 2019

J. Varadharajan .. Appellant /Petitioner
Vs.

1.T.R. Ashok Madhan
(1st respondent set exparte before Tribunal)

2.Reliance General Insurance Co. Ltd.,
No.6, Reliance House, 6th Floor,
Hattows Road, Nungambakkam,
Chennai 600 034. ... Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 10.08.2018, made in M.C.O.P. No. 1830 of 2016, on the file of the Special Sub Judge- I, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Ms. P.T. Saleem Fathima

For Respondents: Mr. S. Arunkumar (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 10.08.2018, made in M.C.O.P. No. 1830 of 2016, on the file of the Special Sub Judge- I, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-claimant filed M.C.O.P. No.1830 of 2016, on the file of the Special Sub Judge- I, Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 23.02.2016.

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 Lorry belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.3,87,200/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 10.08.2018, made in M.C.O.P. No. 1830 of 2016, 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 of both bone in left leg and degloving injuries on the left leg and thigh and was hospitalized for a period of 61 days in 3 different spells and has produced Exs.P4 to P7 to prove the same. The Tribunal has not awarded any amount towards loss of amenities and loss of marital prospects. The appellant has taken treatment from 24.02.2016 to 16.06.2016 as in-patient. The Tribunal has granted compensation towards loss of earning for 4 months, only for the treatment period. The Tribunal having found that the Medical Board has assessed the percentage of permanent disability suffered by the appellant as 40% as per Ex.C1 - disability certificate, ought to have applied multiplier method in awarding compensation towards disability. The amounts awarded by the Tribunal under other heads are meagre and prayed for enhancement of the compensation.

6.The learned counsel appearing for the 2nd respondent made submissions in support of the award passed by the Tribunal 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 in the accident, he suffered fracture of both bone in left leg and degloving injuries on the left leg and thigh and has taken treatment as in-patient in 3 different spells in Sriperumbudur Government Hospital from 24.02.2016 to 25.02.2016, at Sri Ramachandra Hospital from 25.02.2016 to 16.04.2016 and again in the same Hospital from 08.06.2016 to 16.06.2016 and underwent surgeries. The Medical Board has assessed the percentage of disability suffered by the appellant as 40% and issued

disability certificate marked as Ex.C1. The Tribunal has awarded a sum of Rs.1,20,000/- towards disability at the rate of Rs.3,000/- per percentage for 40% 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 2016. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. 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. Hence, the amount awarded by the Tribunal towards 40% disability is enhanced to Rs.2,00,000/- [Rs.5,000/- x 40% disability].

9.The appellant has contended that at the time of accident, he was working as a Catering Master in Arunachala Hospitality Service and was earning a sum of Rs.15,000/- per month. To prove the same, he has marked the salary slip as Ex.P15. The Tribunal considering the materials on record, fixed the monthly income of the appellant as Rs.15,825/-, but granted compensation for loss of income for 4 months. Considering the period of treatment taken by the appellant, he would have not worked atleast for a period of 8 months. Hence, the amount granted by the Tribunal towards loss of income is enhanced to Rs.1,26,600/- [Rs.15,825/- x 8 months]. Considering the nature of injuries and period of treatment taken, the amounts awarded by the Tribunal towards pain and suffering, attendant charges, transportation and extra nourishment are meagre and hence, the same are enhanced to Rs.50,000/-, Rs.50,000/-, Rs.25,000/- and Rs.50,000/- respectively. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same 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	1,20,000/-	2,00,000/-	Enhanced
2.	Pain and suffering	30,000/-	50,000/-	Enhanced

3.	Transportation	5,000/-	25,000/-	Enhanced
4.	Attendant charges	15,500/-	50,000/-	Enhanced
5.	Medical expenses	63,309/-	63,309/-	Confirmed
6.	Loss of earnings	63,300/-	1,26,600/-	Enhanced
7.	Loss of future prospects	30,000/-	30,000/-	Confirmed
8.	Future medical expenses	40,000/-	40,000/-	Confirmed
9.	Extra nourishment	20,000/-	50,000/-	Enhanced
	Total	3,87,109/- rounded off to 3,87,200/-	6,34,909/- rounded off to 6,35,000/-	Enhanced by Rs.2,47,800 /-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.3,87,200/- is enhanced to Rs.6,35,000/- 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. 1830 of 2016. 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.2,47,800/-. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar

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Sub Asst. Registrar

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To

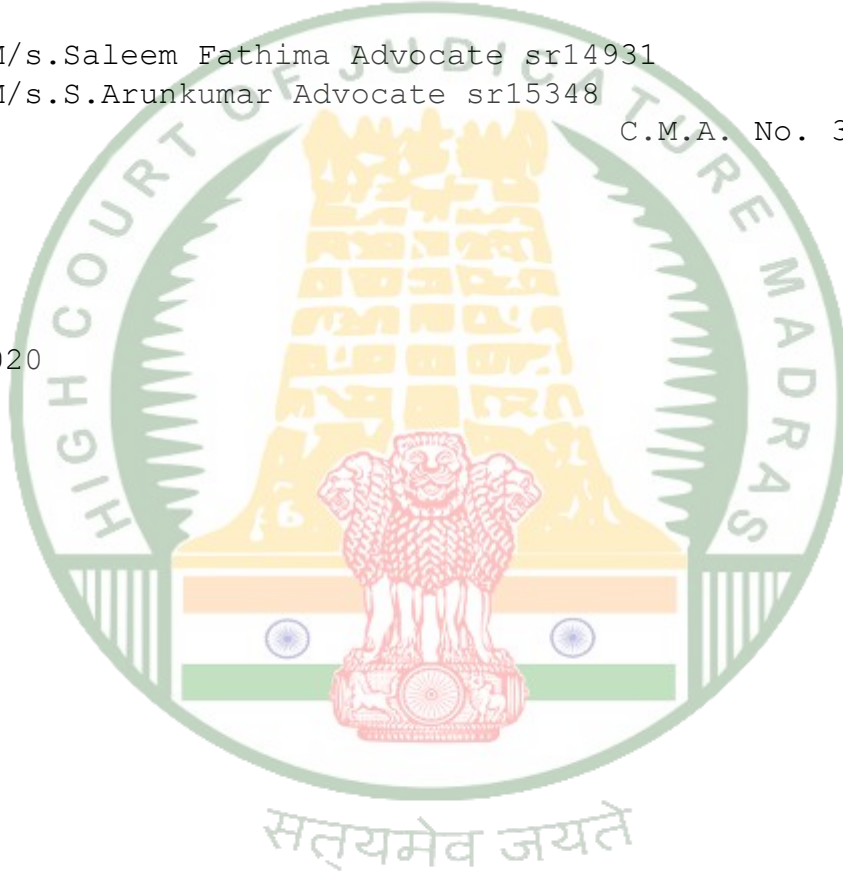
1.The Special Subordinate Judge- I,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

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The Section Officer
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+1 cc to M/s.Saleem Fathima Advocate srl4931
+1 cc to M/s.S.Arunkumar Advocate srl5348

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