

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3153 of 2014

Jayakumar

.. Appellant/Petitioner

Vs.

1.J. Mani

2.New India Assurance Co. Ltd.,
No.109, Nungambakkam High Road,
Chennai 34.

3.M/s. Balaji Probiking
Dev Regency Building,
11-G-1, 1st Main Road,
Adyar, Chennai 20.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.02.2014, made in M.C.O.P. No.846 of 2008, on the file of the Chief Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr. F. Terry Chella Raja
for M/s M.Malar

For Respondents : No appearance (For R1)
Mr. J. Michael Visuvasam (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of compensation granted by the award dated 28.02.2014, made in M.C.O.P. No.846 of 2008, on the file of the Chief Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

2.The appellant-claimant filed M.C.O.P. No.846 of 2008, on the file of the Chief Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.07.2007.

3.The Tribunal considering the pleadings, oral and

documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the Motorcycle belonging to the 1st respondent and directed the respondents 1 and 2 as owner and insurer of the offending vehicle to jointly and severally pay a sum of Rs.1,62,548/- as compensation to the appellant. The Tribunal dismissed the claim petition as against the 3rd respondent.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 28.02.2014, made in M.C.O.P. No.846 of 2008, the appellant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that in the accident, the appellant suffered multiple injuries and fracture all over the body and has taken first aid treatment at Chettinad Speciality Hospital and thereafter, as in-patient at Sri Ramachandra Hospital from 16.07.2007 to 21.07.2007. The appellant examined P.W.6 Doctor, who assessed that the appellant suffered 65% disability. P.W.6 Doctor deposed about the nature of injuries and disability suffered by the appellant. The Tribunal erroneously reduced the percentage of disability to 40% and failed to consider the evidence of Doctor who assessed the disability. Due to the injuries, the appellant is suffering head ache, giddiness, shivering and loss of memory. The Tribunal ought to have awarded compensation for loss of earning capacity and permanent disability separately by adopting multiplier method. The Tribunal failed to award compensation for damages to clothes, transportation, loss of amenities and future medical expenses. The amounts awarded by the Tribunal for extra nourishment and pain and suffering 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 appellant has not proved that he lost earning capacity and income. The appellant also failed to prove that he require treatment in future. Hence, he is not entitled to any compensation by adopting multiplier method and future medical expenses. P.W.6 Doctor is a stock witness. He examined the appellant in the year 2013, after 6 years of the accident. The contention of the learned counsel appearing for the appellant that the appellant suffered head injury is not proved by filing documents. The appellant has not filed any scan report and subsequent treatment records to show that he suffered serious injuries. P.W.6 Doctor assessed that the appellant suffered 65% disability without any basis. The appellant also has not filed any X-ray or CT Scan report to prove the disability. The Tribunal considering all the materials placed before it, reduced the disability to 40% and granted compensation. The total compensation awarded by the Tribunal is not meagre. The appellant is not entitled for any

enhancement and prayed for dismissal of the appeal.

7. Though learned counsel entered appearance on behalf of the 1st respondent, when the matter is taken up for hearing, there is no representation for the 1st respondent.

8. Heard learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

9. From the materials on record, it is seen that it is the contention of the learned counsel appearing for the appellant that in the accident, the appellant suffered injuries. To prove the nature of injuries and disability, the appellant examined himself as P.W.3 and examined P.W.6 Doctor. P.W.6 Doctor assessed the disability of the appellant as 65%. P.W.6 Doctor has not filed any X-ray or Scan report to prove the nature of injuries and disability. The Tribunal in the absence of any materials with regard to disability, held that the assessment of disability by P.W.6 Doctor is excessive and the same is not based on any guidelines issued by the World Health Organization and fixed the percentage of disability at 40%. The Tribunal has given valid reason for reducing the percentage of disability. The appellant claimed that he was doing Catering work and was earning a sum of Rs.6,000/- per month. He failed to prove the avocation and income. In the absence of material evidence with regard to avocation and income, the Tribunal fixed Rs.3,000/- per month as notional income of the appellant and granted compensation for loss of income for 6 months. The accident is of the year 2007. The notional income fixed by the Tribunal is meagre and hence, a sum of Rs.6,500/- per month is fixed as notional income of the appellant. Due to the injuries and disability, the appellant would not have worked at least for 6 months. Hence, the amount awarded by the Tribunal towards loss of income is enhanced to Rs.39,000/- [Rs.6,500/- x 6 months]. The appellant has taken treatment as inpatient at Ramachandra Hospital from 16.07.2007 to 21.07.2007, for a period of 6 days. The Tribunal failed to award any amount towards attendant charges and loss of amenities. Considering the period of treatment taken and nature of injuries suffered, a sum of Rs.7,500/- is awarded towards attendant charges and Rs.10,000/- towards loss of amenities. The Tribunal has awarded meagre amount of Rs.5,000/- each towards extra nourishment. Considering the period of treatment taken, the same is enhanced to Rs.10,000/-. 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
1.	Disability	80,000/-	80,000/-	Confirmed
2.	Extra nourishment	5,000/-	10,000/-	Enhanced
3.	Medical expenses	44,548/-	44,548/-	Confirmed
4.	Loss of income	18,000/-	39,000/-	Enhanced
5.	Attendant charges	-	7,500/-	Granted
6.	Loss of amenities	-	10,000/-	Granted
7.	Pain and suffering	15,000/-	15,000/-	Confirmed
	Total	1,62,548/-	2,06,048/-	Enhanced by Rs.43,500/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,62,548/- is enhanced to Rs.2,06,048/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 and 2 are jointly and severally directed to deposit the 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.846 of 2008. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appeal is dismissed as against the 3rd respondent. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Chief Judge,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

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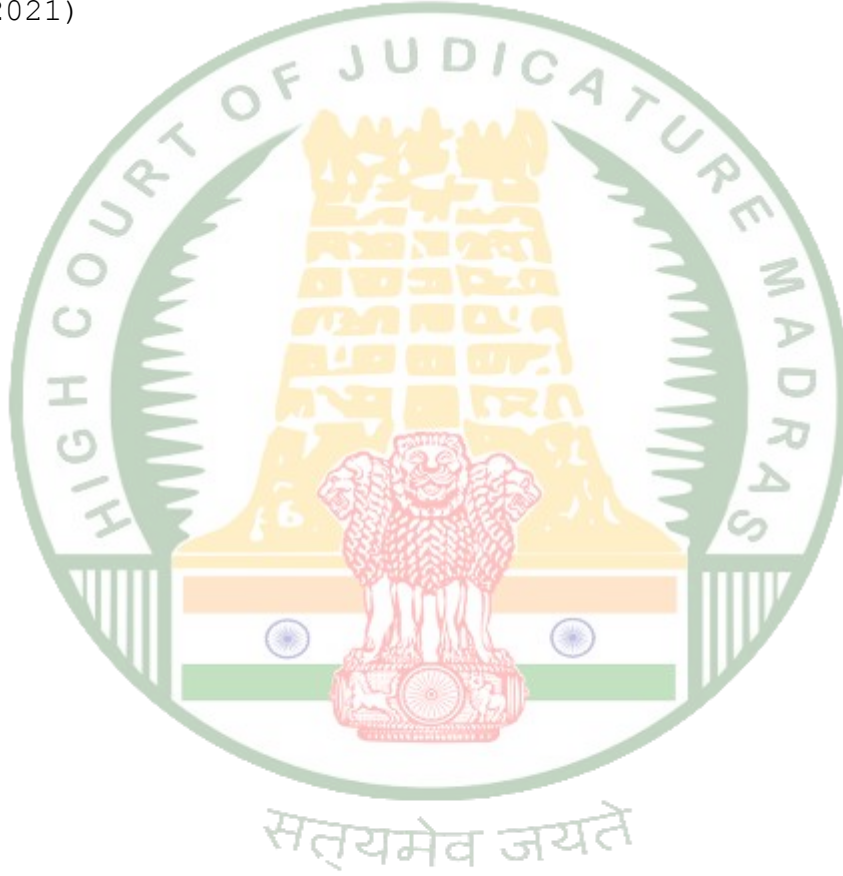
2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.M.Malar, Advocate, S.R.No. 40781

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No. 40755

C.M.A.No.3153 of 2014

VBA (CO)
GN(19/04/2021)



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