

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.896 of 2014

M.Subburam

.. Appellant/Clamant

Vs.

1.Suresh Chand Kothari

2.United India Insurance Company Ltd.,
No.38, Annasalai,
Chennai 2.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.10.2010 made in M.C.O.P.No.4409 of 2006 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

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

For Respondents : Mr.A.Dhiraviyanathan for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 22.10.2010 made in M.C.O.P.No.4409 of 2006 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

2.The appellant is the claimant in M.C.O.P.No.4409 of 2006 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai. He filed the above said claim petition, claiming a sum of Rs.3,50,000/- as compensation for the injuries sustained by him in the accident that took place on 09.03.2005.

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 first respondent and directed the second respondent/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.1,49,500/- 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 contended that in the accident, the appellant sustained fracture involving superior medial and lateral walls of left orbit with mild displacement of medial wall fragment, the left eye pupil dilated and temporal eye pallor vision of left eye is 6/18, head injury and multiple injuries all over the body. The appellant examined the two doctors as P.W.2 & P.W.3 and proved the injuries. P.W.2 and P.W.3/Doctors examined the appellant and assessed that the appellant suffered disability of 25% & 40% for two parts of the body. The Tribunal reduced the percentage of disability from 65% to 50% and awarded a meagre sum of Rs.1,00,000/- (Rs.2,000/- X 50%) towards disability at the rate of Rs.2,000/- per percentage of disability. Due to the injuries, the appellant could not continue his work as he was doing earlier. The Tribunal ought to have adopted multiplier method and awarded compensation towards disability. The Tribunal has not awarded any compensation towards loss of amenities, future prospects, future medical expenses and damage to clothes. 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 second respondent/Insurance Company contended that the appellant has not proved that he suffered functional disability. In the absence of any documentary evidence to prove that the appellant suffered functional disability, the percentage method adopted by the Tribunal is proper. The Tribunal after considering all the materials available on record, 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 second respondent/Insurance Company and perused the entire materials on

record.

8(a). It is the contention of the appellant that in the accident, he sustained fracture involving superior medial and lateral walls of left orbit with mild displacement of medial wall fragment, temporal pallor vision of left eye, head injury and multiple injuries all over the body. To substantiate the said contention, the appellant examined the two doctors as P.W.2 & P.W.3, who have assessed the disability of the appellant as 25% & 40% respectively. The Tribunal reduced the percentage of disability to 50% (20% + 30%) on the ground that the disability assessed by the Doctors are on the higher side and awarded a sum of Rs.1,00,000/- (Rs.2,000/- X 50%) towards disability at the rate of Rs.2,000/- per percentage of disability. The reason given by the Tribunal for reducing the disability is not proper. The respondents did not let in any oral and documentary evidence to disprove the disability assessed by the doctors. Therefore, the appellant is entitled to compensation for 65% disability as there is no contra evidence. The appellant has not proved that he suffered functional disability and there is loss of earning capacity. Therefore, the percentage method adopted and the amount awarded by the Tribunal for the percentage of disability are proper. Thus, the compensation awarded by the Tribunal towards disability is hereby enhanced to Rs.1,30,000/- (Rs.2,000/- x 65).

8(b). According to the appellant, he was working as a room boy in Hotel Heritage and was earning a sum of Rs.2,500/- per month. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.2,500/- as monthly income of the appellant and awarded a sum of Rs.15,000/- (Rs.2,500/- x 6) towards loss of income for six months. The accident is of the year 2005 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.3,000/- is fixed as monthly income of the appellant and a sum of Rs.18,000/- (Rs.3,000/- X 6) is awarded towards loss of income for six months.

8(c). The appellant has taken treatment as in-patient in Government General Hospital, Chennai, from 09.03.2005 to 10.03.2005 and subsequently, he has taken treatment as in-patient in Eye Hospital, Egmore, from 11.03.2005 to 17.03.2005. The amounts awarded by the Tribunal towards attendant charges, transportation and extra nourishment are meagre. Considering the nature of injuries and period of treatment taken by the appellant, the compensation awarded by the Tribunal towards attendant charges, transportation and extra nourishment are

enhanced to Rs.5,000/-, Rs.5,000/- and Rs.10,000/- respectively. The appellant has not produced any document to prove that he is still taking treatment and therefore, he is not entitled to any compensation towards future medical expenses. The amounts awarded by the Tribunal under all 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.	Loss of income	15,000/-	18,000/-	enhanced
2.	Transportation	3,000/-	5,000/-	enhanced
3.	Extra nourishment	5,000/-	10,000/-	enhanced
4.	Damage to clothes	1,000/-	1,000/-	confirmed
5.	Medical expenses	3,000/-	3,000/-	confirmed
6.	Attendant charges	2,500/-	5,000/-	enhanced
7.	Pain & sufferings	20,000/-	20,000/-	confirmed
8.	Disability	1,00,000/-	1,30,000/-	enhanced
	Total	Rs.1,49,500/-	Rs.1,92,000/-	Enhanced by Rs.42,500/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,49,500/- is hereby enhanced to Rs.1,92,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation. The second 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 by making necessary applications before the Tribunal.
No costs.

Sd/-
Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

vkrr

To

1.The VI Judge
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

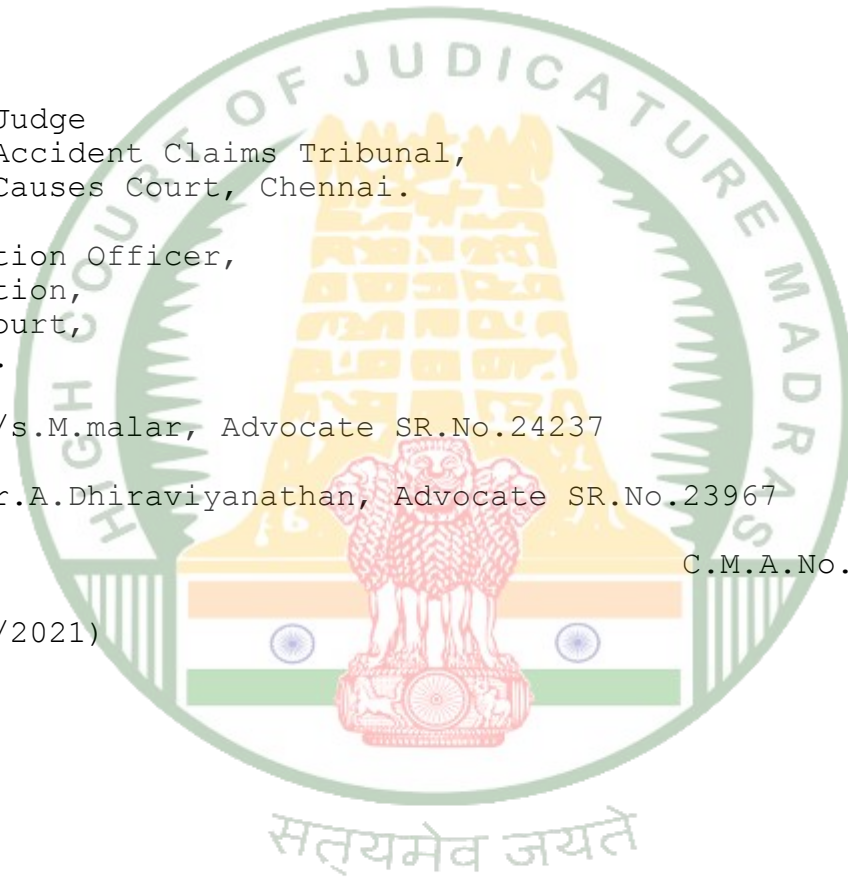
2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to M/s.M.malar, Advocate SR.No.24237

+1cc to Mr.A.Dhiraviyanathan, Advocate SR.No.23967

C.M.A.No.896 of 2014

VBA (CO)
GMY (16/04/2021)



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