

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3635 of 2019

Palani

.. Appellant/Petitioner

Vs.

1.Gnanavel

2.Reliance General Insurance Co. Ltd.,
RAI's Tower,
Plot No.2054, 2nd Avenue, 2nd Floor,
Annanagar,
Chennai - 600 040.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.10.2016 made in M.C.O.P.No.3994 of 2013 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.K.V.Muthu Visakan

For R2 : Ms.C.Bhuvanasundari

R1-Exparte

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 22.10.2016 made in M.C.O.P.No.3994 of 2013 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.3994 of 2013 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 21.05.2013.

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 tempo traveller belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said tempo traveller to pay a sum of Rs.1,07,400/- as compensation to the appellant.

4.Not being satisfied with the quantum of compensation 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 the appellant sustained fracture in the left side 8th & 9th ribs, lungs contusion and left hip joint contusion. The appellant being a centering worker, due to the injuries sustained by him, he could not continue his work as he was doing earlier. The appellant proved the same by examining P.W.2/Doctor. P.W.2/Doctor has assessed the disability of the appellant as 25%, but the Tribunal reduced the disability to 20%. The Tribunal ought to have adopted multiplier method for awarding compensation towards loss of earning power. 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 P.W.2/Doctor has not filed any worksheet and guidelines and the disability assessed by the doctor is not for the whole body. Therefore, percentage of disability fixed by the Tribunal is correct. The appellant has not produced any document to prove his avocation and income and in the absence of material evidence, the Tribunal has rightly fixed a sum of Rs.6,500/- as monthly income of the appellant, and awarded a sum of Rs.3,250/- towards loss of income for fifteen days which is not meagre. The Tribunal after considering the materials available on record, has awarded compensation, which is not meagre. 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 2nd respondent/Insurance Company and perused all the materials

available on record.

8.It is the contention of the appellant that he sustained fracture in the left side 8th & 9th ribs, lungs contusion and left hip joint contusion. P.W.2/Doctor has assessed the disability of the appellant as 25%. The 2nd respondent did not let in any contra evidence to disprove the evidence of P.W.2/Doctor and disability certificate. The Tribunal reduced the percentage of disability to 20% on the ground that P.W.2/Doctor has not assessed the percentage of disability to whole body and awarded a sum of Rs.60,000/- at the rate of Rs.3,000/- per percentage of disability. The reason given by the Tribunal for reducing the percentage of disability is not correct. The appellant is entitled to compensation for 25% of disability as there is no contra evidence. A sum of Rs.75,000/- (25% x Rs.3,000/-) is awarded towards disability by awarding a sum of Rs.3,000/- per percentage of disability.

9.According to the appellant, he was aged 55 years at the time of accident and was earning a sum of Rs.750/- per day by doing centering work. In the absence of material evidence with regard to avocation and income of the appellant, the Tribunal has fixed a sum of Rs.6,500/- as monthly income of the appellant and awarded a sum of Rs.3,250/- towards loss of income for a period of fifteen days, which is not proper. The accident is of the year 2013 and the monthly income fixed by the Tribunal is meagre. A sum of Rs.9,000/- is fixed as monthly income of the appellant. Considering the nature of injuries sustained by the appellant, he would not have attended his work atleast for a period of three months. Hence, a sum of Rs.27,000/- (Rs.9,000/- X 3) is awarded towards loss of income for a period of three months. The appellant has taken treatment as in-patient in Sooriya Hosptial, Saligramam, Chennai on 21.05.2013 and 22.05.2013 for two days. The amounts awarded by the Tribunal towards extra nourishment, attendant charges, loss of amenities and damages to clothes are meagre. Considering the period of treatment and nature of injuries sustained by the appellant, the amounts awarded by the Tribunal towards extra nourishment, attendant charges, loss of amenities and damages to clothes are enhanced to Rs.5,000/-, Rs.2,000/-, Rs.10,000/- and Rs.2,000/- respectively. 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	60,000	75,000	Enhanced
2.	Pain and sufferings	15,000	15,000	Confirmed
3.	Extra nourishment	1,500	5,000	Enhanced
4.	Transport to hospital	1,500	1,500	Confirmed
5.	Damages to clothes	500	2,000	Enhanced
6.	Attendant charges	400	2,000	Enhanced
7.	Medical expenses	21,218	21,218	Confirmed
8.	Future medical expenses	2,000	2,000	Confirmed
9.	Loss of income	3,250	27,000	Enhanced
10.	Loss of amenities	2,000	10,000	Enhanced
	Total	Rs.1,07,368/-	Rs.1,60,718/-	Enhanced by Rs.53,350/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,07,368/- is hereby enhanced to Rs.1,60,718/- 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 necessary Court fee, if any, on the enhanced compensation. The 2nd 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. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

mtl

To

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

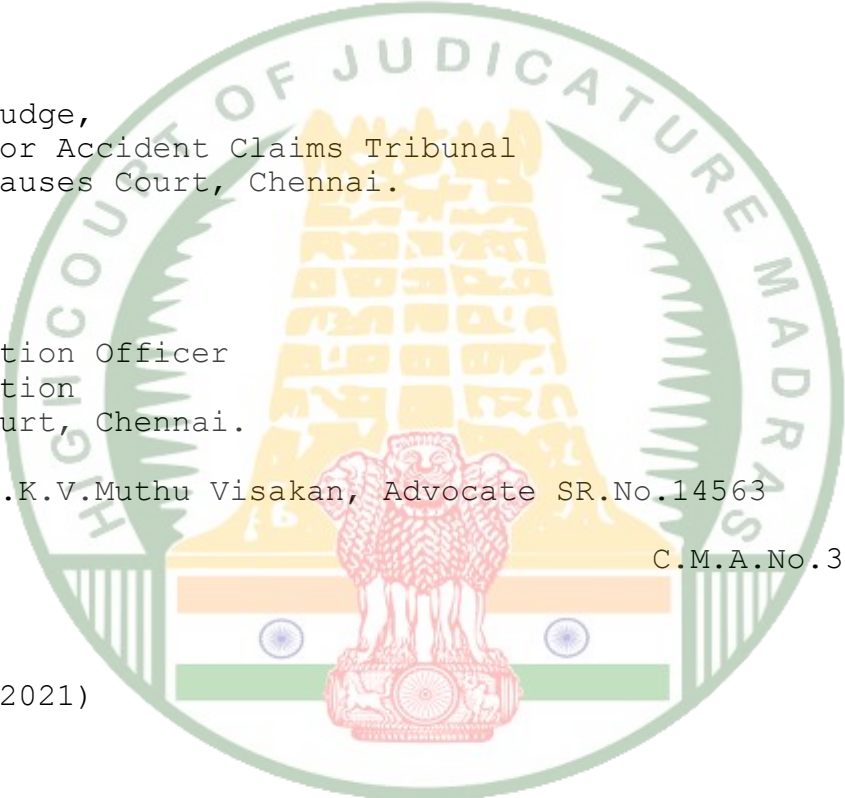
Copy To:

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

+1cc to Mr.K.V.Muthu Visakan, Advocate SR.No.14563

C.M.A.No.3635 of 2019

AD(CO)
GMY (09/04/2021)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the gopuram is a red lion capital on a base. The entire emblem is set against a background of horizontal stripes (green, white, orange, white, green). The words "HIGH COURT OF JUDICATURE MADRAS" are written in a green circle around the emblem. Below the emblem, the motto "सत्यमेव जयते" is written in Devanagari script.

WEB COPY