

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1118 of 2017

K.Sathish Kumar

.. Appellant /Claimant

Vs.

1.The Managing Director,
MTC Ltd.,
Pallavan House, Anna Salai,
Chennai - 600 002.

2.The Branch Manager,
The New India Assurance Co. Ltd.,
Motor Third Party Claims Office,
No.45, Moore Street, Chennai - 600 001.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.08.2015 made in M.C.O.P.No.6196 of 2013 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.R.Nalliyappan

For R1 : Mr.S.S.Swaminathan

For R2 : Ms.R.Sreevidhya

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 25.08.2015 made in M.C.O.P.No.6196 of 2013 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.6196 of 2013 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai. He filed the said claim petition claiming a sum

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of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.10.2013.

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 bus belonging to the 1st respondent/Transport Corporation and directed the 2nd respondent/Insurance Company being insurer of the said bus to pay a sum of Rs.2,66,000/- 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 was aged 37 years at the time of accident and was earning a sum of Rs.10,000/- per month by working as car driver. The Tribunal has fixed a meagre sum of Rs.6,000/- as monthly income of the appellant. The appellant suffered abdominal and liver injuries, spleen disfunction and multiple injuries all over the body. Due to the injuries sustained by him, he could not continue his work as he was doing earlier. P.W.2/Doctor has assessed the disability of the appellant as 90%. Therefore, the appellant has suffered functional disability. The Tribunal without any reason reduced the disability of the appellant to 65%. The Tribunal ought to have adopted multiplier method while awarding compensation towards disability. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.The learned counsel appearing for the 1st respondent contended that the Tribunal has rightly dealt with every aspect of the manner including fixation of disability and rendered well considered finding which needs no interference. He would further contend that the vehicle involved in the accident belongs to the Metropolitan Transport Corporation Limited and insured with the 2nd respondent/Insurance Company and therefore, the 2nd respondent/Insurance Company is liable to pay compensation to the appellant and prayed for dismissal of the appeal as against the 1st respondent.

7.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not produced any document to prove his avocation and income. In the absence of any material evidence, with regard to avocation and income of the appellant, the Tribunal has rightly fixed a sum of Rs.6,000/- as notional income of the appellant. The

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Tribunal after considering all the materials available on record in proper perspective, has awarded compensation, which is not meagre and prayed for dismissal of the appeal.

8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent/Transport Corporation and learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

9. It is the contention of the appellant that he sustained the following injuries:

- (1) Abdominal injury, splenectomy done, liver lacerated sutured
- (2) Head injury & LOC, nasal bleeding
- (3) Abdominal edhck, liver laceration caused indigestion and dyspepsia
- (4) Post Traumatic headache, giddiness, numerous hand disability
- (5) ICD done for B/L Pleural effusion pain on deep inspiration disability

To prove the nature of injuries he examined PW2/Doctor who deposed to that effect. PW2/Doctor Dr. J. R. R. Thiagarajan has assessed the disability of the appellant as 90%. The Tribunal reduced the disability to 65% holding that the percentage of disability assessed by the doctor is on the higher side and awarded a sum of Rs.1,30,000/- (65% x Rs.2,000/-) towards disability at the rate of Rs.2,000/- per percentage of disability. The accident is of the year 2013. The reason given by the Tribunal for reducing the percentage of disability is proper. The appellant is entitled to compensation for 65% towards disability at the rate of Rs.3,000/- per percentage. Thus, a sum of Rs.1,95,000/- (65% x Rs.3,000/-) is awarded towards disability.

10. According to the appellant, he was aged 37 years at the time of accident and was earning a sum of Rs.10,000/- per month by working as Car driver. The appellant failed to prove the said contention. In the absence of any material evidence, with regard to avocation and income of the appellant, the Tribunal fixed a sum of Rs.6,000/- as monthly income of the appellant and awarded a sum of Rs.50,000/- towards loss of income. The accident is of the year 2013 and the monthly income fixed by the Tribunal is meagre. Hence 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 at least for six months. Therefore, a sum of Rs.54,000/- is awarded towards loss of income for six months. The appellant has taken treatment as in-patient in Government Royapettah Hospital for 32 days. The

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amounts awarded by the Tribunal towards extra nourishment, loss of amenities and attendant charges are meagre. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.5,000/-, Rs.5,000/- and Rs.6,000/- awarded by the Tribunal towards extra nourishment, loss of amenities and attendant charges are enhanced to Rs.30,000/-, Rs.50,000/- and Rs.30,000/- 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.	Loss of income	50,000	54,000	Enhanced
2.	Transport to Hospital	10,000	10,000	Confirmed
3.	Extra nourishment	15,000	30,000	Enhanced
4.	Loss of amenities	5,000	50,000	Enhanced
5.	Incidental medical expenses	10,000	10,000	Confirmed
6.	Attendant charges	6,000	30,000	Enhanced
7.	Pain and sufferings	40,000	40,000	Confirmed
8.	Disability	1,30,000	1,95,000	Enhanced
	Total	Rs.2,66,000/-	Rs.4,19,000/-	Enhanced by Rs.1,53,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,66,000/- is hereby enhanced to Rs.4,19,000/- 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 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

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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 (CS-III-MDU)

//True Copy//

Sub Assistant Registrar

mtl

To

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

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

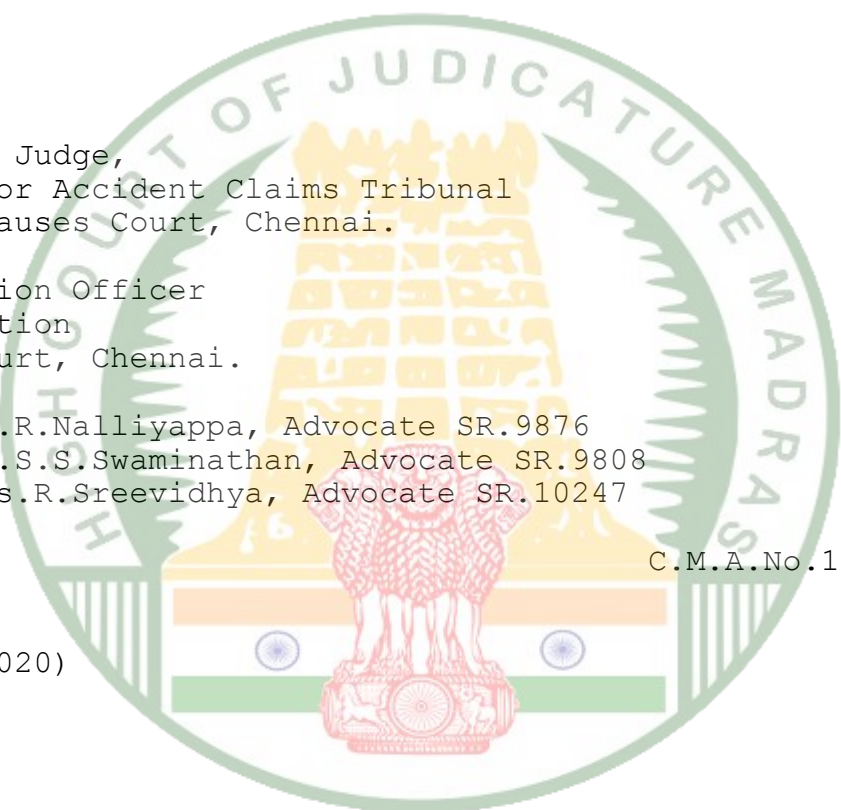
+1cc to Mr.R.Nalliyappa, Advocate SR.9876

+1cc to Mr.S.S.Swaminathan, Advocate SR.9808

+1cc to M/s.R.Sreevidhya, Advocate SR.10247

C.M.A.No.1118 of 2017

SV(CO)
CB(29/12/2020)

The seal of the High Court of Madras is a circular emblem. It features a central golden temple gopuram (tower) with a red lion standing in front of it. The lion is facing forward and is flanked by two smaller lions. The entire emblem is set against a background of horizontal stripes in orange, white, and green. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular border around the central emblem. Below the seal, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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