

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1838 of 2017

K.Raji

.. Appellant/ Claimant

Vs.

1.P.Sivakumar

2.Bajaj Allianz General Insurance Company Limited,
No.25 & 26, Prince Towers,
College Road, Nungambakkam,
Chennai - 600 034.

.. Respondents/ Redpondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.07.2016 made in M.C.O.P.No.918 of 2012 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.Amar D.Pandiya
for Mr.K.Suryanarayanan

For R1 : No appearance
For R2 : Mr.N.Somasundar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 29.07.2016 made in M.C.O.P.No.918 of 2012 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.918 of 2012 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 24.01.2012.

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 car belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the car to pay a sum of Rs.3,08,000/- 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 the Tribunal having found that appellant has taken treatment as in-patient for considerable period, ought to have granted adequate compensation. The appellant was working as Driver and Fireman in Tamil Nadu Fire and Rescue Station, Koyambedu, Chennai - 600 107 and due to the injuries sustained by him in the accident, he resigned his job and surrendered his driving license. The Tribunal ought to have adopted multiplier method and grant compensation for 100% disability. The Tribunal having awarded compensation for loss of income for 3 months, failed to consider the Gross Salary received by the appellant and erred in granting only a sum of Rs.45,459/- towards loss of income at the rate of Rs.15,153/- per month for 3 months and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant failed to prove that he suffered functional disability and he resigned his job only due to the injuries sustained by him in the accident. The Tribunal considering the evidence of P.W.2/Doctor has granted compensation for disability on percentage method. The compensation awarded by the Tribunal under different heads are 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 2nd respondent-Insurance Company and perused the entire materials on record.

8. It is the contention of the appellant that due to the injuries sustained by him in the accident, he resigned his job as Driver and Fireman and surrendered his driving license. The appellant apart from deposing as P.W.1 with regard to nature of injuries and treatment taken, has also examined P.W.2/Doctor, who deposed about the nature of injuries sustained by the appellant and certified that appellant suffered 80% disability and issued Ex.P10/disability certificate to that effect. The

Tribunal reduced the percentage of disability from 80% to 50% on the ground that P.W.2/Doctor has not assessed the percentage of disability for the whole body. The reason given by the Tribunal for reducing the percentage of disability is not valid. Thus, the appellant is entitled to compensation for 80% disability. P.W.2/Doctor did not depose that the appellant suffered functional disability and appellant failed to prove that he resigned his job on medical grounds. In Ex.P12/Service Register of the appellant, there is nothing on record to show that appellant resigned his job on medical grounds. For the above reason, the appellant is not entitled for compensation by adopting multiplier method. The appellant is entitled to compensation only by percentage method for 80% disability. The accident occurred in the year 2012 and the Tribunal has awarded a sum of Rs.3,000/- per percentage of disability, which is proper. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.2,40,000/- (Rs.3,000/- X 80% of disability).

9.It is the contention of the appellant that at the time of accident, he was working as Driver and Fireman in Tamil Nadu Fire and Rescue Station, Koyambedu, Chennai - 600 107 and was earning a sum of Rs.22,500/- per month. The appellant also produced Ex.P13/Pay Slip to show that his Gross Salary is Rs.22,458/-. But, the Tribunal has fixed only a sum of Rs.15,153/- after deduction and awarded compensation based on Net Salary and the same is not correct. The appellant is entitled to compensation for the entire salary of Rs.22,458/-. The Tribunal has awarded loss of income for 3 months. In view of the same, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.67,374/- (Rs.22,458/- X 3 months). The appellant has taken treatment in the hospital as in-patient for 40 days in three different spells. The amounts awarded by the Tribunal towards attendant charges, transportation, extra nourishment, damages to clothes and loss of amenities are meagre and the same are enhanced to Rs.25,000/-, Rs.10,000/-, Rs.25,000/-, Rs.2,000/ and Rs.20,000/- respectively. The amounts awarded by the Tribunal towards pain and sufferings, medical expenses and future medical expenses 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	1,50,000/-	2,40,000/-	Enhanced

2.	Pain and sufferings	50,000/-	50,000/-	Confirmed
3.	Loss of income	45,459/-	67,374/-	Enhanced
4.	Extra nourishment	5,000/-	25,000/-	Enhanced
5.	Transportation	5,000/-	10,000/-	Enhanced
6.	Medical expenses	35,793/-	35,793/-	Confirmed
7.	Attendant charges	8,200/-	25,000/-	Enhanced
8.	Loss of amenities	5,000/-	20,000/-	Enhanced
9.	Future medical expenses	2,500/-	2,500/-	Confirmed
10.	Damages to clothes	1,000/-	1,000/-	Confirmed
	Total	Rs.3,07,952/- rounded off to Rs.3,08,000/-	Rs.4,77,667/- rounded off to Rs.4,77,700/-	enhanced by Rs.1,69,700/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,08,000/- is hereby enhanced to Rs.4,77,700/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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, to the credit of M.C.O.P.No.918 of 2012 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar)

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Sub Assistant Registrar

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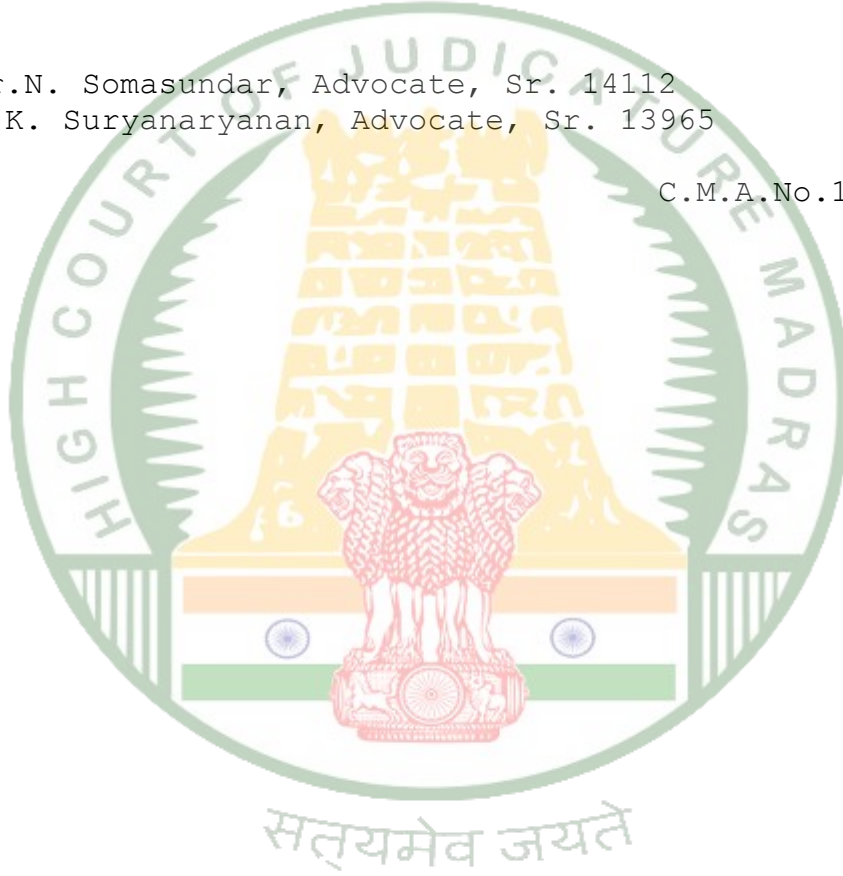
1.The IV Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

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

1 cc to Mr.N. Somasundar, Advocate, Sr. 14112
1 cc to M.K. Suryanaryanan, Advocate, Sr. 13965

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