

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.213 of 2017

V.T.K.Alaganandan

.. Appellant

Vs.

1.S.Vishwanathan

2.Reliance General Insurance Co. Ltd.

Reliance House, 6th floor

Nungambakkam high road

Chennai-600 006.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 02.11.2016 made in M.C.O.P.No.393 of 2014 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

For Appellant : Mr.R.Nalliyappan,

For R2 : Mr.S.Arunkumar

R1 : Not Ready in Notice

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 02.11.2016 made in M.C.O.P.No.393 of 2014 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

2.The appellant is claimant in M.C.O.P.No.393 of 2014 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai. He filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.12.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due

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to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.47,600/- as compensation to the appellant at the first instance and recover the same from the 1st respondent, owner of the motorcycle.

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/claimant contended that due to the accident, the appellant sustained fracture of left clavicle, brain contusion and multiple injuries all over his body. He has taken treatment as in-patient in the hospital for more than five days. After the accident, the appellant could not able to continue his job. P.W.2/Doctor has assessed the disability of the appellant as 55% and Ex.P8/disability certificate was marked to prove the same. The Tribunal without considering the same, reduced the disability to 10%. The appellant suffered functional disability and the Tribunal ought to have adopted multiplier method while awarding compensation towards disability. The Tribunal has not awarded any compensation towards future medical expenses and loss of marital prospects. The amounts awarded by the Tribunal towards transportation, extra nourishment, loss of amenities, attendant charges and pain & suffering are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not proved that he suffered functional disability and therefore, the percentage method applied by the Tribunal is proper. P.W.2/Doctor has not filed any working sheet while assessing disability of the appellant and therefore, the Tribunal has rightly reduced the disability from 55% to 10%. The Tribunal after considering the materials available on record, has 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 2nd respondent and perused all the materials available on record.

8. It is the contention of the appellant that he sustained fracture of left clavicle and brain contusion and after the accident, he could not do the work as he was doing earlier. The

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appellant examined one Dr.J.R.R.Thiagarajan as P.W.2, who has assessed the disability of the appellant as 55%. The Tribunal reduced the disability to 10% on the ground that P.W.2/Doctor has not filed any working sheet and guidelines, the disability assessed by the Doctor is not for the whole body and awarded a sum of Rs.30,000/- (Rs.3,000/- X 10%) towards disability at the rate of Rs.3,000/- per percentage of disability. The appellant has not proved that he suffered functional disability and there is loss of earning capacity. Therefore, the percentage method adopted by the Tribunal is proper. But the reason assigned by the Tribunal for reducing the disability of the appellant to 10% is not correct. The appellant is entitled to compensation for 55% disability at the rate of Rs.3,000/- per percentage of disability. Thus, a sum of Rs.1,65,000/- (Rs.3,000/- X 55%) is granted towards disability.

9. According to the appellant, he was working as Senior Engineer in Olam Information Services Private Ltd., Chennai and was earning a sum of Rs.40,000/- per month. The appellant has marked Ex.P5/appointment order and Ex.P6/pay slip to prove his avocation and income. The Tribunal awarded a sum of Rs.5,000/- towards loss of income during treatment period holding that Ex.P6/pay slip was not proved by examining its author. The compensation awarded by the Tribunal towards loss of income is meagre. Due to the injuries sustained by the appellant, he would not have attended his work atleast for three months. Thus, a sum of Rs.15,000/- (Rs.5,000/- X 3) is awarded towards loss of income for three months. According to the appellant, he has taken treatment as in-patient in Vijaya Institute of Trauma and Orthopedic, Vadapalani, Chennai, from 29.12.2013 to 31.12.2013. The Tribunal has awarded a sum of Rs.600/-, Rs.7,500/-, Rs.1,000/-, Rs.1,000/- and Rs.2,000/- towards attendant charges, pain & suffering, extra nourishment, transportation and loss of amenities respectively, which are meagre. Considering the nature of injuries sustained, disability and the period of treatment taken by the appellant, a sum of Rs.3,000/-, Rs.10,000/-, Rs.5,000/-, Rs.5,000/- and Rs.10,000/- are awarded towards attendant charges, pain & suffering, extra nourishment, transportation and loss of amenities respectively. A sum of Rs.500/- awarded by the Tribunal towards damage to clothes is meagre and hence, the same is hereby enhanced to Rs.1,000/-. The appellant has not produced any document to prove that he is continuing his treatment and therefore, he is not entitled to any compensation towards future medical expenses. 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	30,000	1,65,000	Enhanced
2.	Pain & suffering	7,500	10,000	Enhanced
3.	Extra nourishment	1,000	5,000	Enhanced
4.	Transportation	1,000	5,000	Enhanced
5.	Damage to clothes	500	1,000	Enhanced
6.	Attendant charges	600	3,000	Enhanced
7.	Loss of income	5,000	15,000	Enhanced
8.	Loss of amenities	2,000	10,000	Enhanced
	Total	47,600	2,14,000	Enhanced by Rs.1,66,400 /-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.47,600/- is hereby enhanced to Rs.2,14,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant 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 at the first instance and recover the same from the 1st respondent, owner of the motorcycle. On such deposit, the appellant/claimant 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 (CCC)

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Sub Assistant Registrar

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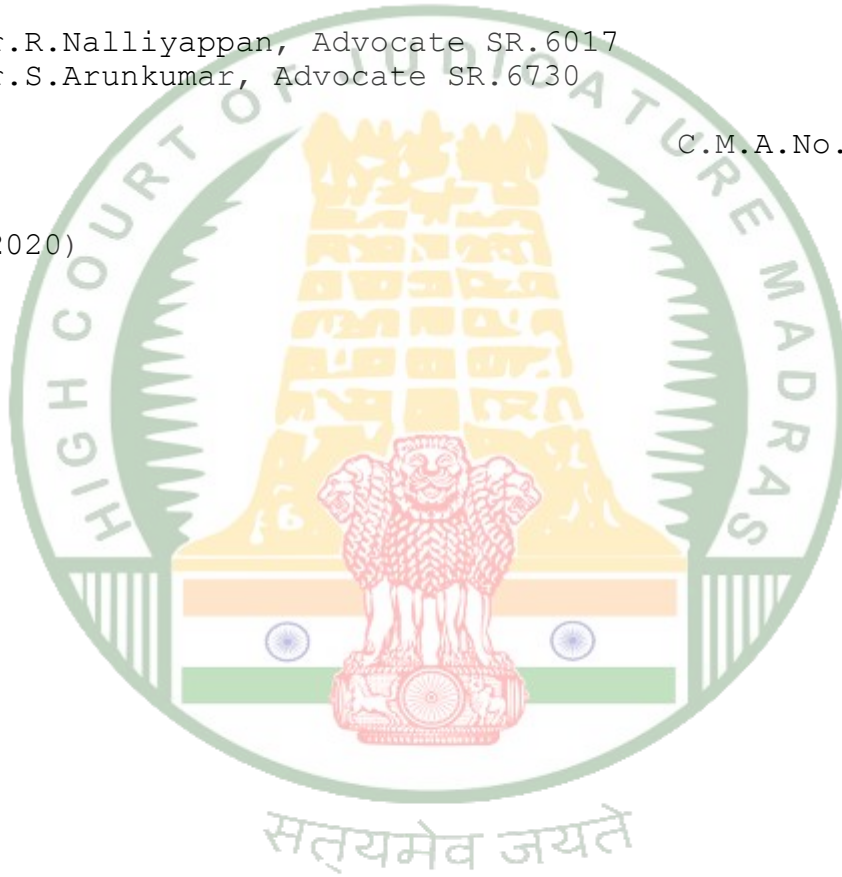
1.The IV Judge
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

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

+lcc to Mr.R.Nalliyappan, Advocate SR.6017
+lcc to Mr.S.Arunkumar, Advocate SR.6730

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SPD(CO)
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