

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2767 of 2017

J.Baskar

... Appellant/Claimant

Vs.

1.Kalyan Aqua & Marine Exports India Pvt. Ltd.
Rep. by Seshadri Chowdry
No.290-1, Vinnakota vari street
Mangamanur road
Ongole-523 002.

2.The Oriental Insurance Company Ltd.
No.15/16, Prakasam salai
2nd floor, Broadway, Chennai-108. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 02.01.2017 made in M.C.O.P.No.2164 of 2014 on the file of Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai.

For Appellant : Ms.M.Punitha Nithyarani for
Mr.A.A.Venkatesan

For R2 : Mr.J.Chandran

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 02.01.2017 made in M.C.O.P.No.2164 of 2014 on the file of Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai.

2.The appellant is claimant in M.C.O.P.No.2164 of 2014 on the file of Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai. He filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 23.02.2014.

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 car belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.2,89,200/- 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/claimant contended that the appellant was earning a sum of Rs.15,000/- per month by working as a lathe operator. In the accident, he sustained compound multiple fracture of left knee, both bones of left leg, lacerated wound exposing muscles over left leg, contusion left chest and external fixation was done. The appellant has taken treatment as in-patient in the Government Stanley Hospital, Chennai, from 23.02.2014 to 11.04.2014. P.W.2/Doctor examined the appellant and assessed the disability of the appellant as 65%. The Tribunal reduced the disability to 45% holding that the disability assessed by the Doctor is on the higher side and the same is not proper. The Tribunal ought to have adopted multiplier method while awarding compensation towards loss of future earning capacity. 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 the appellant has not proved that he suffered functional disability and therefore, the percentage method applied by the Tribunal is proper. 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 was aged 42 years at the time of accident and was earning a sum of Rs.15,000/- per month by working as a lathe operator in M/s.Mod Forge Pvt. Ltd. The appellant has marked Ex.P9/letter issued by the Supervisor of Mod Forge Pvt. Ltd. But the appellant neither examined the Supervisor who issued Ex.P9 nor marked the salary and attendance registers to prove his avocation and income. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.7,500/- as monthly income of the appellant and awarded a sum of Rs.38,500/- (Rs.250/- X 154 days) towards loss of income for the

treatment period. The accident is of the year 2014 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.12,000/- is fixed as monthly income of the appellant. Due to the injuries sustained by the appellant, he would not have attended his work atleast for five months. Hence, a sum of Rs.60,000/- (Rs.12,000/- X 5) is awarded towards loss of income for five months.

9. According to the appellant, he sustained fracture of left leg femur and both bones. He has difficulty in walking, climbing steps and sitting cross legged. P.W.2/Doctor has assessed the disability of the appellant as 65%. The Tribunal reduced the disability to 45% on the ground that the percentage of disability assessed by P.W.2/Doctor is on the higher side and awarded a sum 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 percentage of disability and the amount fixed by the Tribunal per percentage of disability are not proper. Considering the injuries sustained by the appellant, the disability assessed by the Doctor is reduced to 50%. This Court by judgment dated 09.01.2020 made in C.M.A.No.4870 of 2020 in the case of M/s.IFFCO TOKIO General Insurance Company Limited vs. Venkatesh and another), fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2014. In view of the same, a sum of Rs.4,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.2,00,000/- (Rs.4,000/- X 50%). The appellant has taken treatment as in-patient in the Government Stanley Hospital, Chennai, from 23.02.2014 to 11.04.2014 and produced Ex.P4 and Ex.P6/discharge summaries to prove the same. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.15,250/-, Rs.15,000/- and Rs.4,360/- awarded by the Tribunal towards attendant charges, extra nourishment and transportation are hereby enhanced to Rs.60,000/-, Rs.20,000/- and Rs.10,000/- respectively. The amounts awarded by the Tribunal under all the 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	38,500	60,000	Enhanced
2.	Attendant charges	15,250	60,000	Enhanced
3.	Transportation	4,360	10,000	Enhanced
4.	Extra nourishment	15,000	20,000	Enhanced
5.	Damage to clothes	1,000	1,000	Confirmed
6.	Pain and suffering	40,000	40,000	Confirmed
7.	Mental and physical shock	10,000	10,000	Confirmed
8.	Disfigurement	15,000	15,000	Confirmed
9.	Loss of amenities	15,000	15,000	Confirmed
10.	Disability	1,35,000	2,00,000	Enhanced
	Total	2,89,110 rounded off to 2,89,200	4,31,000	Enhanced by Rs.1,41,800 /-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,89,200/- is hereby enhanced to Rs.4,31,000/- 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. 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(CS VIII)

//True Copy//

Sub Assistant Registrar

To

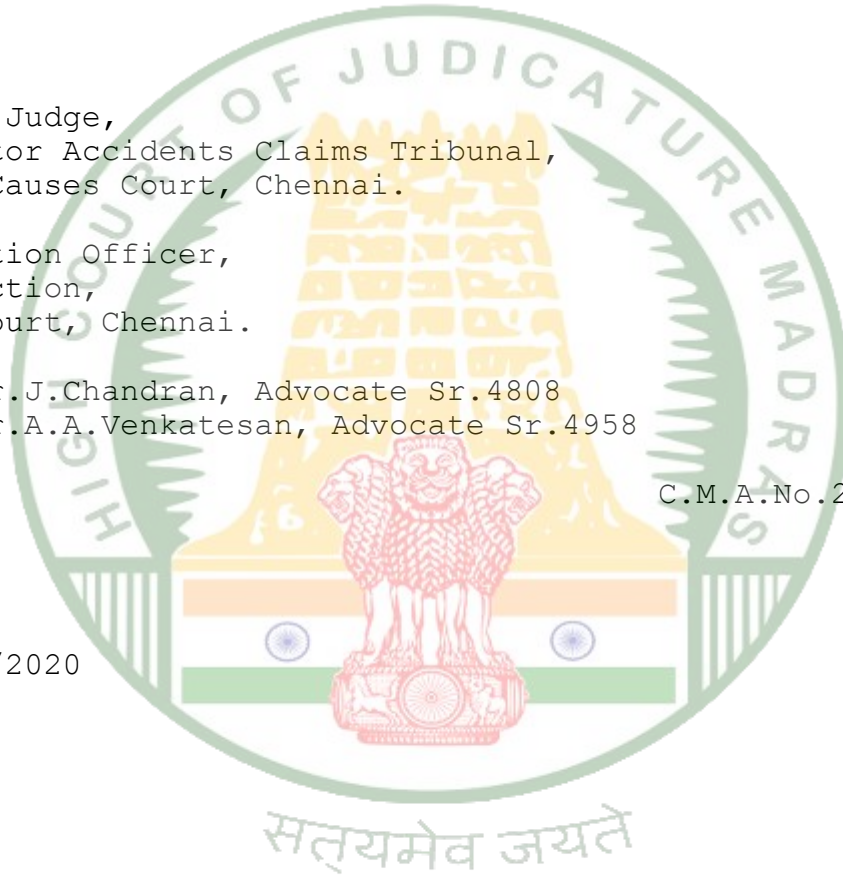
1.The III Judge,
The Motor Accidents Claims Tribunal,
Small Causes Court, Chennai.

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

+1cc to Mr.J.Chandran, Advocate Sr.4808
+1cc to Mr.A.A.Venkatesan, Advocate Sr.4958

C.M.A.No.2767 of 2017

vba[co]
srg 18/12/2020



WEB COPY