

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.2973 OF 2017

Sarath Kumar

.. Appellant/Petitioner

Vs.

1.P.Ramesh

2.Reliance General Insurance
Company Limited
Branch Office-Shri Lakshmi
Complex, 1st Floor,
Bharathi Street,
Omalur Main Road,
Swarnapuri, Salem.

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 08.07.2015 made in M.C.O.P.No.67 of 2014 on the file of the Motor Accident Claims Tribunal / Additional District Court at Namakkal.

For Appellant : Mr.Ma.P.Thangavel

For Respondents : Mr.S.Arunkumar for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 08.07.2015 made in M.C.O.P.No.67 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

2.The appellant is the claimant in M.C.O.P.No.67 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal. He filed the above 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 13.11.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the first respondent and directed the second respondent, being the insurer, to pay a sum of Rs.2,69,500/- 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 in the accident, the appellant suffered compound fracture of both bone in the left leg, hand and head injuries and the Doctor has assessed the disability of the appellant as 50%. The Tribunal reduced the same to 45% stating that neither the doctor who had treated the appellant nor the Doctor who had assessed the disability of the appellant were examined. The Tribunal ought to have adopted multiplier method in awarding compensation instead of adopting percentage method. At the time of accident, the appellant was working as a coolie and was earning a sum of Rs.10,000/- per month. The Tribunal fixed only a meagre sum of Rs.6,000/- per month as notional income of the appellant and awarded compensation towards loss of income for a period of two months. The Tribunal ought to have added 50% towards future prospects. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal considering the nature of injury and the treatment taken by the appellant, has rightly reduced the disability to 45% and awarded compensation towards disability. The appellant failed to prove his avocation and income. In the absence of any material evidence, the Tribunal has rightly fixed monthly income of the appellant at Rs.6,000/- and awarded a sum of Rs.12,000/- towards loss of income for a period of two months. The appellant has not made out any case for enhancement of the 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 second respondent and perused the entire materials on record.

8.It is the contention of the appellant that in the accident, he suffered compound fracture of both bone in the left leg, hand and sustained head injuries. To substantiate the injuries sustained by him, he has examined two doctors who assessed the disability of the appellant as 50% and

Ex.P11/disability certificate was marked to prove the same. But the Tribunal reduced the percentage of disability assessed by the Doctors to 45% holding that neither the doctor who had treated the appellant nor the Doctor who had assessed the disability of the appellant were examined. The reason given by the Tribunal for reducing the disability is proper. 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 amount awarded by the Tribunal per percentage of disability is meagre. The accident is of the year 2013 and hence, the amount awarded towards disability is enhanced to Rs.1,35,000/- (Rs.3,000/- X 45%) by awarding Rs.3,000/- per percentage of disability.

9. According to the appellant, at the time of accident, he was working as a coolie and was earning a sum of Rs.10,000/- per month. He failed to prove the said contention. In the absence of material evidence with regard to avocation and income of the appellant, the Tribunal fixed notional income of the appellant at Rs.6,000/- per month. The accident occurred in the year 2013 and the notional income fixed by the Tribunal is meagre. Therefore, a sum of Rs.8,000/- per month is fixed as notional income of the appellant. Due to the fracture, the appellant would not have attended his work atleast for a period of four months. Therefore, the appellant is entitled to a sum of Rs.32,000/- (Rs.8,000/- X 4) towards loss of income for four months. The Tribunal has awarded a meagre sum of Rs.5,000/- towards extra nourishment. Considering the nature of injuries, a sum of Rs.10,000/- is awarded towards extra nourishment. The Tribunal has not awarded any amount towards loss of damage to clothes and the appellant is entitled to a sum of Rs.2,000/- for the same. The amounts granted by the Tribunal under the other heads are just and reasonable and hence, they 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
1.	Disability	90,000/-	1,35,000/-	enhanced
2.	Medical expenses	97,516/-	97,516/-	confirmed
3.	Loss of income	12,000/-	32,000/-	enhanced
4.	Transportation	5,000/-	5,000/-	confirmed

5.	Pain & sufferings	25,000/-	25,000/-	confirmed
6.	Extra nourishment	5,000/-	10,000/-	enhanced
7.	Attendant charges	10,000/-	10,000/-	confirmed
8.	Loss of amenities	25,000/-	25,000/-	confirmed
9.	Loss of damage to clothes	-	2,000/-	granted
	Total	Rs.2,69,516/-	Rs.3,41,516/-	
	Rounded off to	Rs.2,69,500/-	Rs.3,41,500/-	enhanced by Rs.72,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,69,500/- is hereby enhanced to Rs.3,41,500/- 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 second respondent 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 by making necessary applications before the Tribunal. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.72,000/-, enhanced by this Court as per the order of this Court dated 06.09.2017, made in C.M.P. No. 13236 of 2017 in C.M.A.SR.No.52661 of 2016. No costs.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

vkr

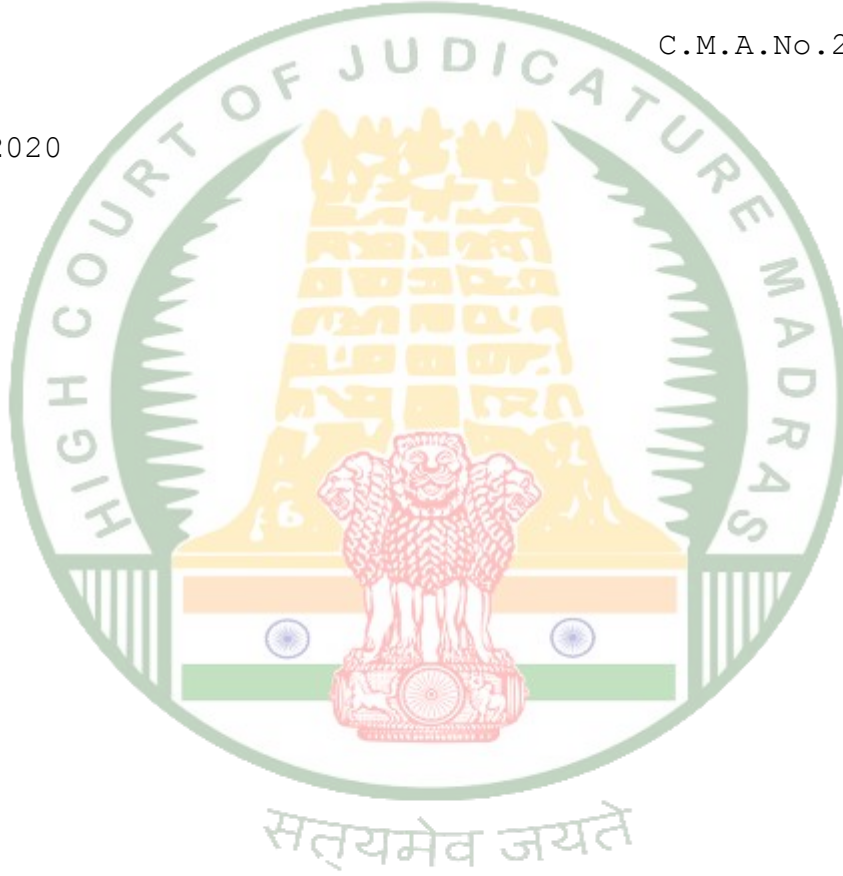
To

1. The Additional District Court,
Motor Accident Claims Tribunal,
Namakkal.
2. The Section Officer,
VR Section,
High Court, Madras.

+lcc to Mr.Ma.P.Thangavel, Advocate, S.R.No.12030
+lcc to Mr.S.Arunkumar , Advocate, S.R.No.12516

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CA (CO)
CS/04/11/2020



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