



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 3173 of 2017

E. Alavuddin .. Appellant / Petitioner  
Vs.

1.B. Chandran  
(R1 remained exparte before the  
Tribunal and hence, notice dispensed with.)

2.The New India Assurance Co. Ltd.,  
Motor Third Party Claims Hub,  
No. 45, Moore Street,  
Chennai 600 001. .. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 02.03.2017, made in M.C.O.P. No. 1879 of 2014, on the file of the III Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Ms. A. Subadra  
for M/s. M. Malar

For Respondents : Ms. R. Sreevidhya (for R2)  
R1-Exparte

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 02.03.2017, made in M.C.O.P. No. 1879 of 2014, on the file of the III Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-claimant filed M.C.O.P. No. 1879 of 2014, on the file of the III Court of Small Causes, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 13.12.2013.



3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1<sup>st</sup> respondent, driver-cum-owner of the TATA Magic Van and directed the 2<sup>nd</sup> respondent as insurer of the vehicle to pay a sum of Rs.1,57,800/- as compensation to the appellant.

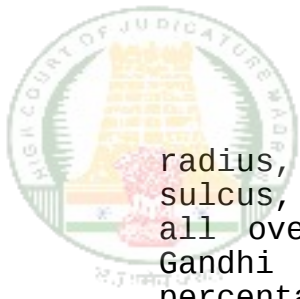
4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 02.03.2017, made in M.C.O.P. No. 1879 of 2014, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended that at the time of accident, he was working as Tailor and was earning a sum of Rs.12,000/- per month. The Tribunal has fixed a meagre sum of Rs.7,500/- per month as notional income and awarded only a sum of Rs.15,250/- towards loss of income for a period of 61 days. Due to the accident, the appellant sustained fractures and multiple injuries all over the body and was admitted in Government Hospital, Chrompet on 13.12.2013 for first-aid treatment and subsequently took treatment as in-patient in Rajiv Gandhi Government Hospital on 13.12.2013 and discharged on the same day. P.W.2-Doctor assessed the percentage of disability suffered by the appellant as 80%. The Tribunal without considering the nature of injuries, reduced the percentage of disability to 25%. The Tribunal ought to have adopted multiplier method in awarding compensation towards disability. The Tribunal has not awarded any amount towards medical expenses and future medical expenses. The amounts awarded by the Tribunal towards extra nourishment, pain and suffering, damages, attendant charges and loss of amenities are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company contended that in the absence of any evidence by the appellant to prove that he suffered functional disability, the Tribunal rightly considering the nature of injuries, reduced the percentage of disability to 25%, giving valid reasons and awarded a sum of Rs.75,000/- towards disability, which is not meagre. The Tribunal has granted compensation under different heads, which are not meagre. 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 2<sup>nd</sup> respondent and perused the materials available on record.

8.It is the contention of the appellant that due to the accident, the appellant suffered injuries like type 2 tibial plateau fracture in right leg, fracture of distal end of left



radius, right eye-ecchymosis, right head-laceration-temporal sulcus, deformity at leg and wrist and multiple grievous injuries all over the body and took treatment as in-patient in Rajiv Gandhi Hospital on 13.12.2013. P.W.2 - Doctor has assessed the percentage of disability suffered by the appellant as 80% and issued Ex.P7 - Disability Certificate to that effect. The Tribunal considering the evidence of P.W.2- Doctor, disability certificate and the nature of injuries, reduced the percentage of disability to 25% , holding that the assessment of the Doctor is on the higher side. The said reasoning is proper. The Tribunal has awarded a meagre sum towards extra nourishment, transport to hospital, attendant charges and loss of amenities. Considering the nature of injuries and the period of treatment taken, the amounts awarded by the Tribunal towards extra nourishment, transport to hospital, attendant charges and loss of amenities are enhanced to Rs.10,000/-, Rs.5,000/-, Rs.1,000/- and Rs.20,000/- respectively.

8(a) According to the appellant, at the time of accident, he was doing Tailoring work and was earning a sum of Rs.12,000/- per month. He has not substantiated the same. The Tribunal has fixed a meagre sum of Rs.250/- per day and arrived at a sum of Rs.7,500/- per month as notional income of the appellant. The accident is of the year 2013. In the absence of any material evidence to prove the avocation and income of the appellant, a sum of Rs.9,000/- per month is fixed as the notional income of the appellant. Due to the injuries, the appellant would not have worked atleast for a period of four months. Hence, the amounts awarded by the Tribunal towards loss of income is modified to Rs.36,000/- (Rs.9,000/- x 4 months). The amounts awarded by the Tribunal under other heads 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.   | Loss of income     | 15,250/-                        | 36,000/-                          | Enhanced                               |
| 2.   | Attendant charges  | 500/-                           | 1,000/-                           | Enhanced                               |
| 3.   | Transportation     | 1,000/-                         | 5,000/-                           | Enhanced                               |
| 4.   | Extra nourishment  | 5,000/-                         | 10,000/-                          | Enhanced                               |
| 5.   | Disability         | 75,000/-                        | 75,000/-                          | Confirmed                              |
| 6.   | Damages to clothes | 1,000/-                         | 1,000/-                           | Confirmed                              |



WEB COPY

|    |                                       |                                               |            |                            |
|----|---------------------------------------|-----------------------------------------------|------------|----------------------------|
| 7. | Loss of amenities                     | 10,000/-                                      | 20,000/-   | Enhanced                   |
| 8. | Pain and suffering                    | 40,000/-                                      | 40,000/-   | Confirmed                  |
| 9. | Damages for mental and physical shock | 10,000/-                                      | 10,000/-   | Confirmed                  |
|    | Total                                 | 1,57,750/-<br>rounded off<br>to<br>1,57,800/- | 1,98,000/- | Enhanced by<br>Rs.40,200/- |

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,57,800/- is enhanced to Rs.1,98,000/- along with interest and costs. The 2<sup>nd</sup> respondent-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 1879 of 2014. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.40,200/-. No costs.

Sd/-  
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Section Officer,  
V.R Section,  
High Court, Madras.

2. The III Judge,  
Court of Small Causes,  
(Motor Accident Claims Tribunal),  
Chennai.

+1cc to M/s.M.Malar, Advocate, S.R.No.9629

C.M.A. No. 3173 of 2017

CA(CO)  
SB(01/09/2021)