

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3389 of 2017

G.Tamilselvan ...Appellant/Claimant

Vs.

1.Mr.M.Kali

2.ICICI Lombard General Insurance Co. Ltd.,
No.84 & 85, Arihand Plaza, Waltax Road,
Park Town, Chennai-3

(R1 remained ex-parte before the Tribunal)

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.01.2017 made in M.A.C.T.O.P.No.4509 of 2011 on the file of Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant : Mr.F.Terry Chella Raja

For R2 : Mrs. R.Sreevidhya

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 30.01.2017 made in M.A.C.T.O.P.No.4509 of 2011 on the file of Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

2.The appellant is claimant in M.C.O.P.No. 4509 of 2011 on the file of the Motor Accident Claims Tribunal, VI Court of

Small Causes, Chennai. He filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 22.09.2010.

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 lorry bearing registration No.TN 21 AX 9835 belonging to the 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.95,000/- as compensation to the appellant.

3.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

4.The learned counsel appearing for the appellant contended that at the time of accident, the appellant was practicing as Junior Advocate and was earning Rs.25,000/- per month. In the accident, the appellant has sustained fracture of right neck near scapula, deep injury over left ear and degloving injury at the left clerical bone and multiple injuries all over the body. Due to the injuries, the appellant could not continue his work as he was doing earlier. The Tribunal, without considering the same, has awarded compensation towards disability by applying percentage method. The Tribunal ought to have adopted multiplier method for awarding compensation towards future loss of earning. PW2 Doctor assessed the disability of the appellant as 30%, but the Tribunal reduced the same to 20% without giving any reason. The Tribunal has not awarded any amount towards medical expenses and future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

5.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 lost income and therefore, the Tribunal has rightly applied percentage method for awarding compensation towards disability. Further, PW2 is not the Doctor who treated the appellant. Therefore, the Tribunal reduced the percentage of disability from 30% to 20% and after considering both oral and documentary evidence in proper perspective, awarded compensation, which is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant as well as 2nd respondent/Insurance Company and perused all the materials available on record.

7. From the materials available on record, it is seen that the appellant has sustained multiple fractures and grievous injuries all over the body. He was admitted in the Government General Hospital, Chengalpet on 22.09.2010 and the appellant absconded from the said hospital. PW2 Doctor assessed the disability of the appellant as 30%, but the Tribunal reduced the same to 20%, holding that deep laceration on the left side of the appellant's neck is not sustained in the accident. The reason given by the Tribunal for reducing the percentage of disability is not correct. The respondents have not let in any evidence to disprove the evidence of P.W.2 Doctor and Ex.P.4/disability certificate. Hence, the appellant is entitled to compensation for 30% disability as there is no contra evidence. The appellant has not proved that he suffered functional disability and lost income. Hence, he is not entitled to compensation for disability by adopting multiplier method. The percentage method adopted by the Tribunal is proper. Thus, the amount awarded by the Tribunal towards loss of earning capacity is modified to Rs.90,000/- (Rs.3,000/- x 30%) at the rate of Rs.3,000/- per percentage of disability.

7(i). The appellant contended that at the time of accident, he was practising as Junior Advocate and was earning a sum of Rs.25,000/- per month. The appellant failed to produce any document to prove the income. In the absence of any material evidence, the Tribunal has awarded a sum of Rs.10,000/- towards loss of income for one month. The accident is of the year 2010. The monthly income of Rs.10,000/- fixed by the Tribunal is proper. Due to injuries, the appellant could not have worked atleast for three months. The appellant is entitled to a sum of Rs.30,000/- (Rs.10,000/- x 3) as compensation towards loss of income for three months.

7(ii). The appellant has taken treatment in the hospital as in-patient for 40 days. Since the appellant did not produce the discharge summary and Medical Bills to prove the same, the Tribunal has not awarded any amount towards attendant charges and medical expenses and the same is proper. The Tribunal has awarded meagre amounts of Rs.15,000/- and Rs.5,000/- towards pain and suffering and loss of amenities. Considering the nature of injuries, the amounts awarded by the Tribunal towards pain and suffering and loss of amenities are enhanced to Rs.25,000/- and Rs.15,000/- respectively. The Tribunal has altogether awarded a sum of Rs.5,000/- towards transportation and extra

nourishment, which is meagre. Hence, a sum of Rs.5,000/- is awarded towards transportation and Rs.1,000/- is awarded towards extra nourishment. 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.	Pain and Suffering	15,000	25,000	Enhanced
2.	Transportation and Extra nourishment	5,000	5,000 1,000	Confirmed Granted
3.	Loss of Income	10,000	30,000	Enhanced
4.	Loss of earning capacity	60,000	90,000	Enhanced
5.	Loss of Amenities	5,000	15,000	Enhanced
	Total	Rs.95,000/-	Rs.1,66,000/-	Enhanced by Rs.71,000/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.95,000/- is hereby enhanced to Rs.1,66,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant 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 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)

//True Copy//

Sub Assistant Registrar

vsn

To

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

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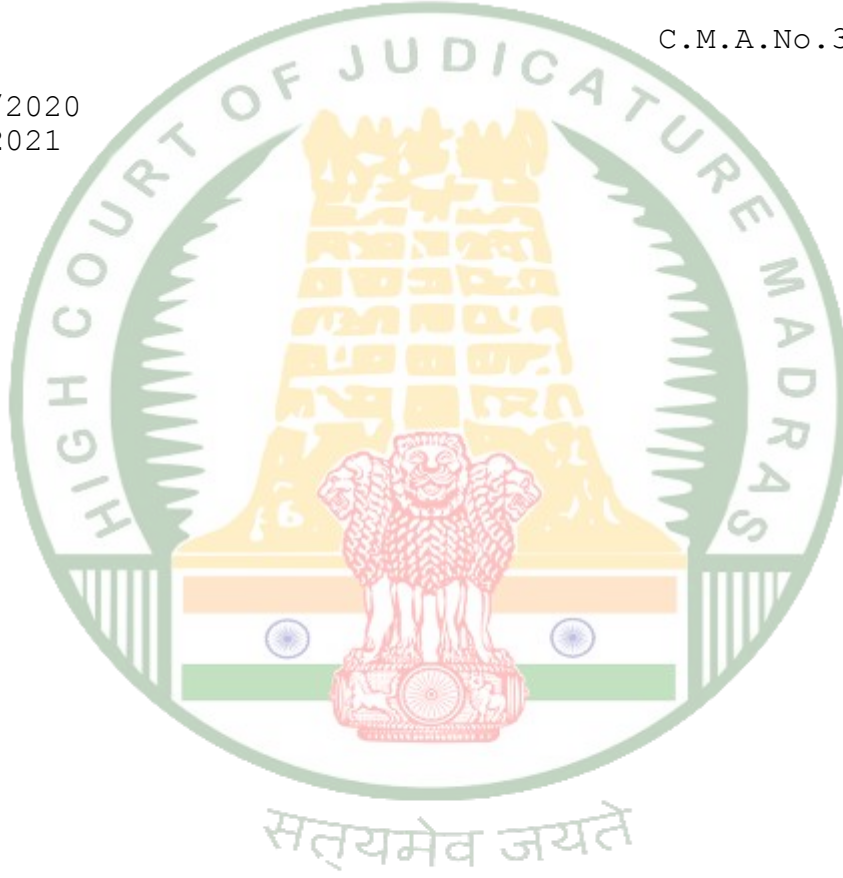
The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to M.Malar Advocate SR.NO.11457

+1cc to Mrs.R.Sreevidya, Advocate SR.NO.11299

C.M.A.No.3389 of 2017

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