

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4682 of 2019

M.Surya

.. Appellant /Claimant

Vs.

1.K.Sakthivel

2.United India Insurance Co. Ltd.,
Silingi Building,
New No.134, Old No.40 - 45,
Greens Road,
Chennai - 600 006. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.11.2018 made in M.C.O.P.No.966 of 2013 on the file of Motor Accidents Claims Tribunal, Small Causes Court No.V, Chennai.

For Appellant : Mr.R.Kishore for
Mr.A.N.Viswanatha Rao

For R2 : Mr.M.J.Vijayaraaghavan
R1 person not found

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 19.11.2018 made in M.C.O.P.No.966 of 2013 on the file of Motor Accidents Claims Tribunal, Small Causes Court No.V, Chennai.

2.The appellant is claimant in M.C.O.P.No.966 of 2013 on the file of Motor Accidents Claims Tribunal, Small Causes Court No.V, Chennai. She filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by

her in the accident that took place on 11.09.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 1st respondent/owner-cum-driver of the auto and directed the 2nd respondent/Insurance Company being insurer of the said auto to pay a sum of Rs.1,60,000/- as compensation to the appellant at the first instance and recover the same from the 1st respondent.

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 sustained fracture of right mandible, underwent surgery and screws were implanted. P.W.3/Doctor has assessed the disability of the appellant as 25%. The Tribunal ought to have adopted multiplier method while awarding compensation towards disability. The appellant was earning a sum of Rs.10,000/- per month by selling vegetables. The Tribunal without considering the same, fixed only a meagre sum of Rs.7,000/- as monthly income of the appellant. 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 produced any document to prove his avocation and income. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal rightly fixed a sum of Rs.7,000/- as monthly income of the appellant. The Tribunal after considering all the materials available on record in proper perspective, 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/Insurance Company and perused all the materials available on record.

8. It is the contention of the appellant that he sustained fracture of right mandible - ORIF, underwent surgery and plates were implanted. The appellant examined one Dr.Amarnath as P.W.3, who has assessed the partial permanent disability of the appellant as 25% and marked Ex.P17 & Ex.P18/X-rays and Ex.P19/disability certificate to prove the

injuries. The Tribunal reduced the disability to 20% holding that P.W.3/Doctor has not assessed the disability of the appellant to his whole body and he has not produced any working sheet for the assessment of disability. However, the Tribunal awarded a sum of Rs.75,000/- towards disability at the rate of Rs.3,000/- per percentage for 25% disability. Hence the same is not interfered with. The appellant has not proved that she suffered functional disability and there is loss of earning capacity. Therefore, the appellant is not entitled any compensation towards disability by adopting multiplier method.

9. According to the appellant, she was earning a sum of Rs.10,000/- per month by selling vegetables. The appellant failed to prove the said contention. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.7,000/- as monthly income of the appellant and awarded a sum of Rs.21,000/- towards loss of income for three months. The accident is of the year 2011 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.9,000/- is fixed as monthly income of the appellant. Due to the injuries sustained by the appellant, she would not have attended her work atleast for a period of five months. Therefore, a sum of Rs.45,000/- (Rs.9,000/- x 5) is awarded towards loss of income for five months. The appellant has taken treatment as in-patient in the hospital from 12.09.2011 to 16.09.2011. A sum of Rs.1,500/- awarded by the Tribunal towards attendant charges is meagre. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.5,000/- is awarded towards attendant charges. 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.	Pain and suffering	30,000	30,000	Confirmed
2.	Transport and extra nourishment	20,000	20,000	Confirmed
3.	Disability	75,000	75,000	Confirmed

4.	Loss of income	21,000	45,000	Enhanced
5.	Loss of amenities	10,000	10,000	Confirmed
6.	Medical expenses	2,271	2,271	Confirmed
7.	Attendant charges	1,500	5,000	Enhanced
	Total	Rs.1,59,771/- is rounded off to Rs.1,60,000/-	Rs.1,87,271 /- rounded off to Rs.1,87,300 /-	Enhanced by Rs.27,300/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,60,000/- is hereby enhanced to Rs.1,87,300/- 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 vehicle. 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/-

Asst.Registrar (CS VI)

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Sub Asst. Registrar

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To

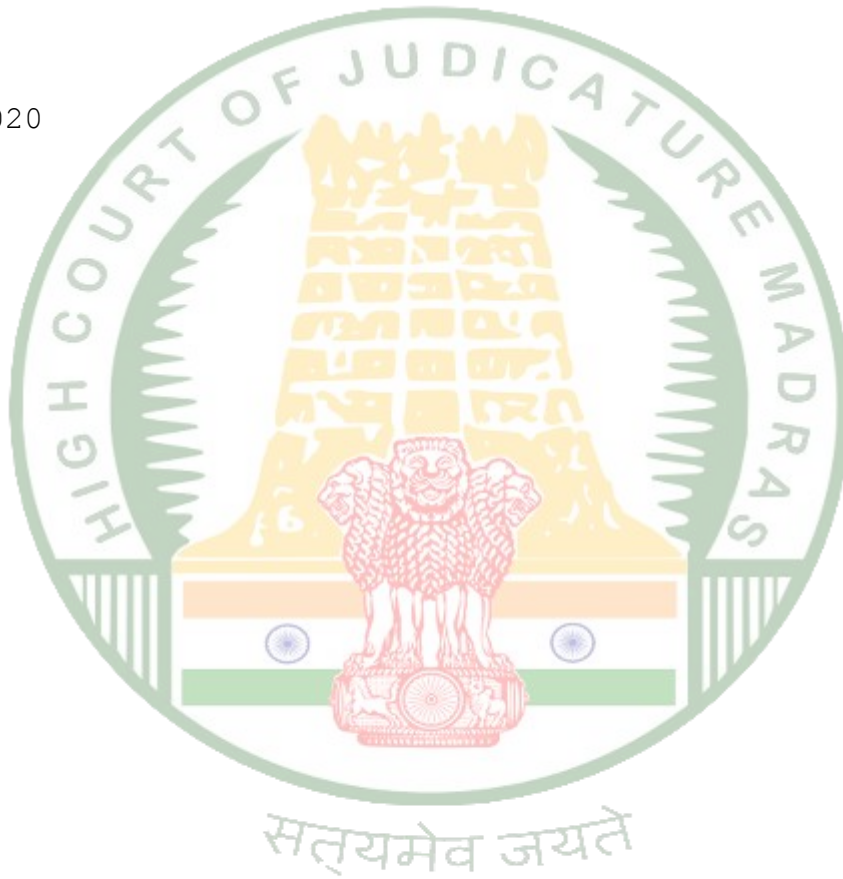
1.The V Judge
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

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

+1 cc to Mr.M.J.Vijayaraaghavan Advocate sr3970

C.M.A.No.4682 of 2019

vba (co)
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