

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.52 OF 2017

D.Guru Moorthy

.. Appellant/Petitioner

Vs.

1.C.H.Srinivasa Rao

2.ICICI Lombard General Insurance Company Ltd.

No.140, Nungambakkam high road

Chennai-600 034.

(R1 & 2 Exparte before 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 18.10.2016 made in M.C.O.P.No.1094 of 2014 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

For Appellant : Mr.R.Nalliyappan

For R2 : Mr.C.Elamurugan for
Mr.K.K.Ramakrishnan

J U D G M E N T
सत्यमेव जयते

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 18.10.2016 made in M.C.O.P.No.1094 of 2014 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

2.The appellant is claimant in M.C.O.P.No.1094 of 2014 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai. He filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.02.2014.

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 Tata Ace belonging to the 1st respondent and directed the 2nd respondent/ Insurance Company being insurer of the said vehicle to pay a sum of Rs.2,27,200/- as compensation to the appellant at the first instance and recover the same from the 1st respondent, owner of the vehicle, as the Tata Ace belonging to the 1st respondent was not having valid fitness certificate at the time of accident.

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 due to the accident, the appellant sustained Grade III fracture of both bones on his left leg, fracture of patella extension and multiple injuries all over his body. He has taken treatment as in-patient in the hospital for more than 50 days. After the accident, the appellant can walk only with the help of others and he could not do the work as he was doing earlier. P.W.2/Doctor has assessed the disability of the appellant as 70% and disability certificate was marked as Ex.P8 to prove the same. The Tribunal without considering the same, reduced the disability to 40%. The appellant suffered functional disability and the Tribunal ought to have adopted multiplier method while awarding compensation towards disability. The amounts awarded by the Tribunal towards transportation, extra nourishment, loss of amenities, loss of education, attendant charges and pain & suffering 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. P.W.2/Doctor has not filed any working sheet while assessing disability of the appellant and therefore, the Tribunal has rightly reduced the disability from 70% to 40%. 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 sustained Grade III fracture of both bones on his left leg and fracture of patella extension and after the accident, the appellant could not do the work as he was doing earlier. The appellant has examined one Dr.J.R.R.Thiagarajan as P.W.2, who has assessed the disability of the appellant as 70%. The Tribunal reduced the disability to 40% on the ground that P.W.2/Doctor has not filed any working sheet and guidelines, the disability assessed by the Doctor is not for the whole body and awarded a sum of Rs.1,20,000/- (Rs.3,000/- X 40%) towards disability at the rate 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 disability of the appellant to 40% and the amount fixed by the Tribunal per percentage of disability are not correct. Considering the injuries sustained by the appellant, the disability assessed by the Doctor is reduced to 55%. 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.2,20,000/- (Rs.4,000/- X 55%).

9.According to the appellant, he was working as delivery boy in gas link agency and was earning a sum of Rs.600/- per day. He failed to substantiate the said contention. In the absence of any material evidence with regard to avocation and income of the appellant, the Tribunal fixed a sum of Rs.6,500/- as monthly income of the appellant and awarded a sum of Rs.32,500/- (Rs.6,500/- X 5) towards loss of income for five months. The accident is of the year 2014 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, he would not have attended his work atleast for eight months. Thus, a sum of Rs.72,000/- (Rs.9,000/- X 8) is awarded towards loss of income for eight months. According to the appellant, he has taken treatment as in-patient in Stanley Medical College Hospital, Chennai, from 06.02.2014 to 03.03.2014 and from 13.03.2014 to 28.03.2014. The Tribunal has

awarded a sum of Rs.8,400/-, Rs.40,000/-, Rs.4,000/-, Rs.4,000/- and Rs.5,000/- towards attendant charges, pain & suffering, extra nourishment, transportation and loss of amenities respectively, which are meagre. Considering the nature of injuries and the period of treatment taken by the appellant, a sum of Rs.50,000/-, Rs.50,000/-, Rs.30,000/-, Rs.10,000/- and Rs.25,000/- are awarded towards attendant charges, pain & suffering, extra nourishment, transportation and loss of amenities respectively. A sum of Rs.750/- awarded by the Tribunal towards damage to clothes is meagre and hence, the same is hereby enhanced to Rs.2,000/-. 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.	Disability	1,20,000	2,20,000	Enhanced
2.	Pain & suffering	40,000	50,000	Enhanced
3.	Extra nourishment	4,000	30,000	Enhanced
4.	Transportation	4,000	10,000	Enhanced
5.	Damage to clothes	750	2,000	Enhanced
6.	Attendant charges	8,400	50,000	Enhanced
7.	Medical expenses	8,504	8,504	Confirmed
8.	Future medical expenses	4,000	4,000	Confirmed
9.	Loss of income	32,500	72,000	Enhanced
10.	Loss of amenities	5,000	25,000	Enhanced
	Total	2,27,154 rounded off to 2,27,200	4,71,504 rounded off to 4,71,500	Enhanced by Rs.2,44,300/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,27,200/- is hereby enhanced to Rs.4,71,500/- 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 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/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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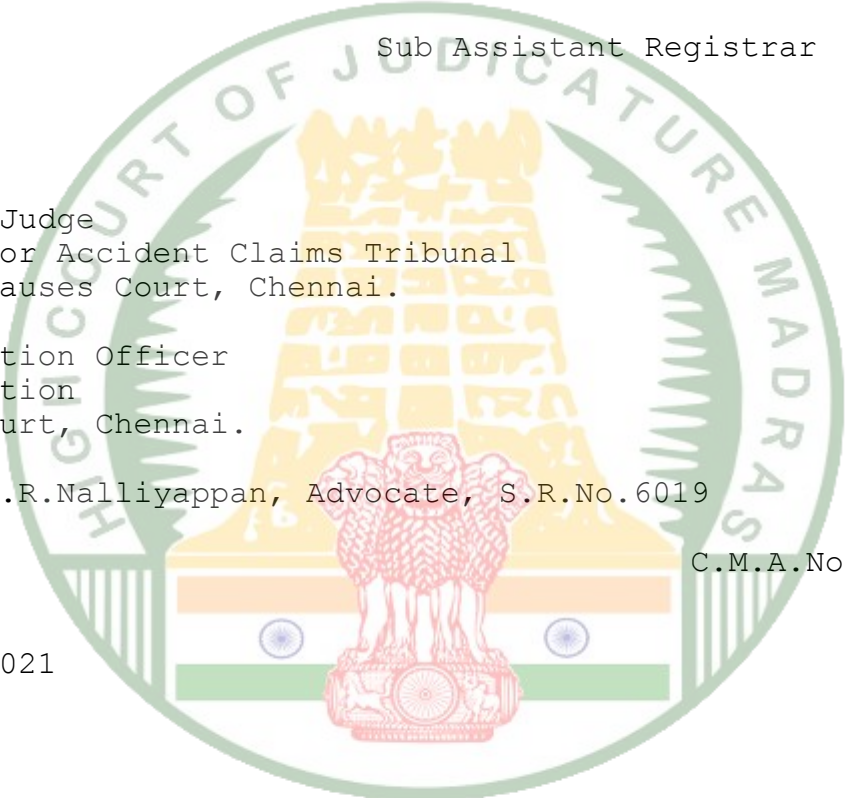
1. The IV Judge
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

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

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.6019

C.M.A.No.52 of 2017

PP(CO)
CS/05/01/2021



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