



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.426 of 2021

V.Muthu @ Muthumanikandan

.. Appellant/Petitioner

Vs.

1.S.Sivagamasundari

2.Bajaj Alliance General Insurance Company Limited,
No.528, P.H.Road,
Arumbakkam,
Chennai - 106

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.01.2020 made in M.C.O.P.No.5587 of 2014 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : M/s.S.R.Suga
For R2 : Mr.E.Rajadurai
for Mr.M.B.Raghavan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 02.01.2020 made in M.C.O.P.No.5587 of 2014 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.5587 of 2014 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.12,00,000/- as compensation for the injuries sustained by him in the accident that took place on 18.05.2014.

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 Omni van belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.2,50,100/- 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 multiple injuries all over the body. The Medical Board examined the appellant and certified that appellant suffered 30% disability and issued disability certificate Ex.C1 to that effect. But the Tribunal awarded a meagre sum of Rs.90,000/- towards disability at the rate of Rs.3,000/- per percentage of disability. The accident occurred in the year 2014 and the Tribunal ought to have awarded more amount towards disability. The Tribunal ought to have awarded compensation for loss of earning capacity separately. At the time of accident, the appellant was working as Stock Handler at Atchayam Business Solution Private Limited, Chennai and was earning a sum of Rs.12,000/- per month. But the Tribunal fixed a meagre sum of Rs.11,000/- per month as notional income of the appellant and awarded compensation towards loss of income only for three months. The appellant has taken treatment at Rajiv Gandhi Government General Hospital as inpatient from 18.05.2014 to 14.07.2014 and underwent surgery on 02.07.2014 for ORIF along with precutaneous screw fixation. The amounts awarded by the Tribunal towards loss of income, extra nourishment, pain and sufferings, attendant charges and loss of amenities are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent contended that the Tribunal accepted the disability certificate issued by the Medical Board and awarded a sum of Rs.90,000/- for 30% disability at the rate of Rs.3,000/- per percentage of disability and the same is not meagre. The Tribunal accepted Ex.P8/Pay Slip of the appellant and fixed the monthly income of the appellant at Rs.11,000/- and awarded a sum of Rs.33,000/- towards loss of income for three months and the same is not meagre. The Tribunal considering the entire materials on record, has awarded a sum of Rs.2,50,100/- as compensation to the appellant under different heads and the same is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

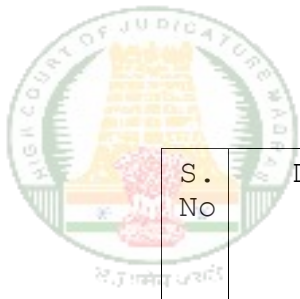
7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and perused the entire materials on record.

8. It is the contention of the appellant that in the accident he suffered Grade III compound fracture of right ankle joint subluxation and multiple injuries all over the body. The Medical



Board examined the appellant and certified that the appellant suffered 30% disability and issued Ex.C1/disability certificate to that effect. The Tribunal accepted the disability certificate issued by the Medical Board and awarded a sum of Rs.90,000/- for 30% disability at the rate of Rs.3,000/- per percentage of disability and the same is meagre. This Court by the judgment reported in 2020 (1) TN MAC 617 [M. Chinnathambi Vs. S.Deepa 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.1,20,000/- (Rs.4,000/- X 30% disability). The appellant has not proved that he suffered functional disability and lost his earning capacity. Hence, he is not entitled to any amount towards loss of earning capacity.

9.It is the contention of the appellant that at the time of accident, he was working as Stock Handler at Atchayam Business Solution Private Limited, Chennai and was earning a sum of Rs.12,000/- per month. To prove the avocation and income, the appellant has produced the Ex.P8/Pay slip, to show that he was earning a sum of Rs.11,000/- per month. Accordingly, the Tribunal fixed a sum of Rs.11,000/- per month as notional income of the appellant and awarded compensation towards loss of income for three months. The accident occurred in the year 2014 and the notional income fixed by the Tribunal as per Ex.P8/Pay slip produced by the appellant is not meagre. The Tribunal has awarded a sum of Rs.33,000/- towards loss of income for a period of three months. Due to the injuries and disability suffered by the appellant in the accident, he would not have attended his work atleast for a period of six months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.66,000/- (Rs.11,000/- X 6 months). The appellant has taken treatment at Rajiv Gandhi Government General Hospital, Chennai as inpatient from 18.05.2014 to 14.07.2014. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards attendant charges, extra nourishment, damages to clothes and loss of amenities are meagre and the same are enhanced to Rs.50,000/-, Rs.50,000/-, Rs.3,000/- and Rs.30,000/- respectively. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	90,000/-	1,20,000/-	Enhanced
2.	Pain and sufferings	25,000/-	25,000/-	Confirmed
3.	Extra nourishment	10,000/-	50,000/-	Enhanced
4.	Transport to Hospital	40,000/-	40,000/-	Confirmed
5.	Damages to clothes	500/-	3,000/-	Enhanced
6.	Attendant charges	11,600/-	50,000/-	Enhanced
7.	Medical expenses	25,000/-	25,000/-	Confirmed
8.	Future medical expenses	10,000/-	10,000/-	Confirmed
9.	Loss of Income	33,000/-	66,000/-	Enhanced
10	Loss of Amenities	5,000/-	30,000/-	Enhanced
	Total	Rs.2,50,100/-	Rs.4,19,000/-	Enhanced by Rs.1,68,900/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,50,100/- is hereby enhanced to Rs.4,19,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the 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, to the credit of M.C.O.P.No.5587 of 2014 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar



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To

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

Copy to:
The Section Officer,
VR Section, High Court,
Madras.

+1cc to M/s.S.R.Suga, Advocate, S.R.No.14934

C.M.A.No.426 of 2021

RGN(CO)
CB(30/09/2021)