



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.313 of 2021

Louis Antony

.. Appellant/Petitioner

Vs.

1.Bala Subramaniam

(R1 was set exparte before the Tribunal)

2.United India Insurance Company Limited

Third party hub, Silingi building

No.134, Greams road

Murugesanaicker street

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 09.01.2020 made in M.C.O.P.No.6317 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court No.2, Small Causes Court, Chennai.

For Appellant : Mr.K.V.Muthu Visakan

For R2 : Mr.S.Arunkumar



JUDGMENT

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 09.01.2020 made in M.C.O.P.No.6317 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court No.2, Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.6317 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court No.2, Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 08.08.2014.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.1,87,400/- as compensation to the appellant at the first instance and recover the same from the 1st respondent, owner of the motorcycle.

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 fractures on right hand middle finger and right foot and multiple injuries all over the body. He has taken treatment as in-patient in Bone and Joint Hospital, Anna nagar, from 09.08.2014 to 12.08.2014 and underwent surgery. The Medical Board after examining the appellant certified that the appellant suffered 10% disability. Due to the injuries, the appellant could not do the work as he was doing earlier. The Tribunal ought to have adopted multiplier method and awarded compensation towards loss of earning capacity. At the time of accident, the appellant was doing marketing work in Ayngaran Anak Video (P) Limited and was earning a sum of Rs.15,000/- per month. The Tribunal without considering the same, fixed only a meagre sum of Rs.9,500/- per



month as notional income of the appellant. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

WEB COPY

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 lost his earning capacity. The appellant did not examine any Doctor to prove that he suffered functional disability. In the absence of any material with regard to loss of earning capacity, the Tribunal rightly adopted percentage method and granted compensation towards disability, which is not meagre. The amounts awarded by the Tribunal under different heads are also not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard through "Video-conferencing" the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the entire materials on record.

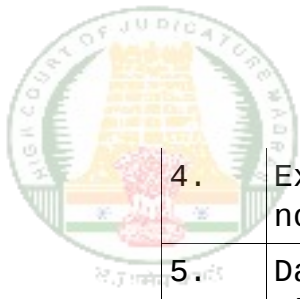
8. It is the case of the appellant that in the accident, he suffered fractures on right hand middle finger and right foot and multiple injuries all over the body. The Medical Board after examining the appellant certified that he suffered 10% disability. The Tribunal fixed the disability of the appellant at 10% and awarded a sum of Rs.3,000/- per percentage of disability. The appellant has not produced any document to prove that he suffered functional disability and lost his earning capacity. Hence, he is not entitled to any compensation by adopting multiplier method. The accident is of the year 2014 and the amount awarded by the Tribunal per percentage of disability 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 rise 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.40,000/- (Rs.4,000/- X 10%).



8(i) The appellant contended that he has taken treatment as in-patient in Bone and Joint Hospital, Anna nagar, from 09.08.2014 to 12.08.2014 and underwent surgery. The amounts awarded by the Tribunal towards pain and suffering, transportation, extra nourishment and attendant charges are meagre. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards pain and suffering, transportation, extra nourishment and attendant charges are hereby enhanced to Rs.25,000/-, Rs.10,000/-, Rs.15,000/- and Rs.10,000/- respectively.

8(ii) It is the contention of the appellant that he was doing marketing work in Ayngaran Anak Video (P) Limited and was earning a sum of Rs.15,000/- per month at the time of accident. The appellant 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.9,500/- per month as notional income of the appellant. The accident is of the year 2014 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.13,000/- is fixed as monthly income of the appellant. Due to the injuries sustained in the accident, the appellant would not have attended the work atleast for a period of four months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.52,000/- (Rs.13,000/- X 4). The amounts awarded by the Tribunal under all 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	30,000	40,000	Enhanced
2.	Pain and suffering	15,000	25,000	Enhanced
3.	Transportation	5,000	10,000	Enhanced



4.	Extra nourishment	10,000	15,000	Enhanced
5.	Damage to clothes and articles	2,000	2,000	Confirmed
6.	Loss of amenities	15,000	15,000	Confirmed
7.	Loss of income	28,500	52,000	Enhanced
8.	Medical expenses	56,886	56,886	Confirmed
9.	Future medical expenses	20,000	20,000	Confirmed
10.	Attendant charges	5,000	10,000	Enhanced
	TOTAL	1,87,386 rounded off to 1,87,400	2,45,886 rounded off to 2,45,900	Enhanced by Rs.58,500/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,87,400/- is hereby enhanced to Rs.2,45,900/- 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 at the first instance and recover the same from the 1st respondent. 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. No costs.

Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

kj



The Special Subordinate Judge No.2
Motor Accident Claims Tribunal
Small Causes Court, Chennai.

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

C.M.A.No.313 of 2021

<https://hcservices.ecourts.gov.in/hcservices/>