



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1038 of 2014

S.Anthoni Jayakumar

.. Appellant/Petitioners

Vs.

1.J.Mariammal

(1st respondent remained exparte before the Tribunal)

2.National Insurance Co. Ltd.,

Kancheepuram Branch,

225, Gandhi Road,

Kancheepuram 631 501.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.03.2011, made in M.C.O.P. No.12 of 2008, on the file of the II Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Ms.V.Suguna

for M/s.C and K Law Firm

For Respondents : Mr.S.Vadivel (For R2)

R1 : Exparte

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode")

This appeal has been filed for enhancement of compensation granted by the award dated 09.03.2011, made in M.C.O.P. No.12 of 2008, on the file of the II Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

2.The appellant-claimant filed M.C.O.P. No.12 of 2008, on the file of the II Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.20,00,000/- as



compensation for the injuries sustained by him in the accident that took place on 14.11.2007.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the Lorry owned by the 1st respondent and directed the 2nd respondent, as insurer of the offending vehicle, to pay a sum of Rs.6,10,500/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 09.03.2011, made in M.C.O.P. No.12 of 2008, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained amputation of right leg below knee, besides other severe injuries and took treatment as in-patient at Parvathy Hospital, Chennai, from 14.11.2007 to 03.12.2007 and underwent surgeries as evidenced by Exs.P1 and P2. P.W.2-Doctor examined the appellant and issued disability certificate that the appellant suffered 50% permanent disability and deposed to that effect. The appellant produced and marked the disability certificate through P.W.2 as Ex.P11. Due to the injuries sustained in the accident, the appellant could not continue his avocation as Lorry Driver and hence, the appellant suffered 100% functional disability. The Tribunal failed to award any amount towards loss of amenities and attendant charges. The amounts awarded by the Tribunal towards transportation, extra nourishment, damage to clothes, pain and suffering and loss of earning power are meagre and prayed for enhancement of the compensation.

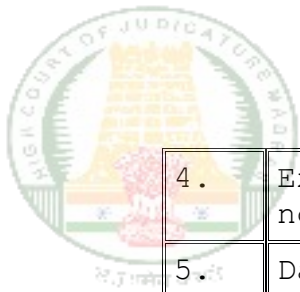
6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company submitted that the Tribunal considering the evidence of P.W.2 Doctor and Ex.P11 - disability certificate produced by him, granted compensation towards loss of earning power by adopting multiplier method. The total compensation awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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



8. From the materials on record, it is seen that it is the case of the appellant that in the accident, he sustained amputation of right leg below knee, head injury and multiple injuries all over the body and has taken treatment as in-patient at Parvathy Hospital, Chennai from 14.11.2007 to 03.12.2007. He underwent two surgeries on 14.11.2007 and 26.11.2007. He filed discharge summary as Ex.P2, to substantiate the same. P.W.2-Doctor examined the appellant and certified that the appellant suffered 50% permanent disability and issued Ex.P11 - disability certificate. It is the contention of the appellant that at the time of accident, he was aged 27 years, working as a Lorry Driver and was earning a sum of Rs.7,000/- per month. Except producing the driving license, the appellant has not filed any document to prove his avocation and income. The Tribunal, in the absence of any documents, fixed the monthly income of the appellant as Rs.4,500/-. The accident is of the year 2007. Considering the year of accident and nature of work done by the appellant, a sum of Rs.6,500/- per month is fixed as notional income of the appellant. The Tribunal rightly applied the multiplier '17', considering the age of the appellant. Hence, the loss of earning power granted by the Tribunal for 50% permanent disability, is modified as Rs.6,63,000/- [Rs.6,500/- x 12 x 17 x 50%]. The Tribunal failed to award any amount towards attendant charges and loss of amenities. Considering the period of treatment taken by the appellant and the surgeries underwent by him, a sum of Rs.15,000/- each is awarded towards attendant charges and loss of amenities. Considering the nature of injuries sustained, disability suffered and period of treatment taken, the amounts awarded by the Tribunal towards extra nourishment and transportation are meagre and hence, the same are enhanced to Rs.15,000/- and Rs.5,000/- 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:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning power	4,59,000/-	6,63,000/-	Enhanced
2.	Loss of income during treatment	13,500/-	13,500/-	Confirmed
3.	Transportation	2,000/-	5,000/-	Enhanced



WEB COPY

4.	Extra nourishment	5,000/-	15,000/-	Enhanced
5.	Damage to clothes	1,000/-	1,000/-	Confirmed
6.	Medical expenses	80,000/-	80,000/-	Confirmed
7.	Pain and sufferings	50,000/-	50,000/-	Confirmed
8.	Loss of amenities	-	15,000/-	Granted
9.	Attendant charges	-	15,000/-	Granted
	Total	6,10,500/-	8,57,500/-	Enhanced by Rs.2,47,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.6,10,500/- is enhanced to Rs.8,57,500/- 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, 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.12 of 2008. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsa

To

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



Copy To

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

WEB COPY

+1cc to Mr.S.Vadivel, Advocate SR.No.63332

C.M.A.No.1038 of 2014

KV (CO)
GN (29/12/2021)