



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2021

CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3748 of 2019

S.Subburaman

.. Appellant/Petitioner

Vs.

1.Balaji

(R1 remained exparte before 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 24.03.2017 made in M.C.O.P.No.3699 of 2012 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant	:	Mr.K.V.Muthu Visakan
For R2	:	Mr.D.Bhaskaran
R1	:	Not Ready in notice

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 24.03.2017 made in M.C.O.P.No.3699 of 2012 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.3699 of 2012 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.1,50,000/- as compensation for the injuries sustained by him in the accident that took place on 16.03.2012.

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 auto belonging to the 1st respondent and directed the 2nd respondent-Insurance



Company to pay a sum of Rs.45,600/- as compensation to the appellant at the first instance and recover the same from the 1st respondent.

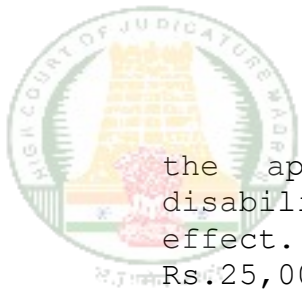
4. Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellant contended that in the accident the appellant sustained Laceration with degloving injury over right foot, injury in chest and severe injury in right leg and multiple injuries all over the body and has taken treatment as outpatient in the New Hope Indian Speciality Hospitals, Arumbakkam, Chennai. He examined Dr.K.J.Mathiazhagan as P.W.2 and proved the nature of injuries and disability. P.W.2/Doctor examined the appellant and certified that appellant suffered 15% disability and issued Ex.P7/disability certificate to that effect. The 2nd respondent has not let in any contra evidence to the evidence of P.W.2/Doctor and Ex.P7/disability certificate. The Tribunal in the absence of any contra evidence, erroneously rejected Ex.P7/disability certificate. The Tribunal ought to have granted compensation as claimed by the appellant under different heads and prayed for enhancement of compensation.

6. Per contra, Mr.D.Bhaskaran, learned counsel appearing for the 2nd respondent-Insurance Company contended that appellant suffered only simple injuries. He was treated only as outpatient and there is no bone injury as claimed by him. The Tribunal considering the nature of injuries, did not accept the evidence of P.W.2/Doctor and Ex.P7/disability certificate issued by him. The Tribunal granted excess amount towards pain and sufferings. In view of the same, the appellant is not entitled for any enhancement 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 and perused the entire materials on record.

8. It is the case of the appellant that in the accident he sustained Laceration with degloving injury over right foot, injury in chest and severe injury in right leg and multiple injuries all over the body and has taken treatment as outpatient in the New Hope Indian Speciality Hospitals, Arumbakkam, Chennai. He examined Dr.K.J.Mathiazhagan as P.W.2 and proved the nature of injuries and disability suffered by him. P.W.2/Doctor examined



the appellant and certified that appellant suffered 15% disability and issued Ex.P7/disability certificate to that effect. During treatment, the appellant has spent a sum of Rs.25,000/- for hospital expenses. On the other hand, it is the case of the 2nd respondent that appellant suffered only simple injuries and compensation awarded by the Tribunal is not meagre. From the evidence of P.W.2/Doctor and Ex.P7/disability certificate, it is mentioned that "pain and stiffness in right foot and ankle movements restricted. Difficulty in walking/climbing steps and standing work and scar over right foot". The 2nd respondent has not disproved the evidence of P.W.2/Doctor and Ex.P7/disability certificate by letting in any evidence. The reason given by the Tribunal for not accepting the evidence of P.W.2/Doctor, Ex.P7/disability certificate and not granting any compensation for disability is not proper. In view of the same, the appellant is entitled to compensation for disability as per Ex.P7/disability certificate. The accident is of the year 2012 and the appellant is entitled to a sum of Rs.3,000/- per percentage of disability. Thus, the appellant is entitled to Rs.45,000/- (Rs.3,000/- X 15% of disability) towards disability. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, 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.	Disability	-	45,000/-	Granted
2.	Pain and sufferings	25,000/-	25,000/-	Confirmed
3.	Medical expenses	8,599/-	8,599/-	Confirmed
4.	Extra nourishment	5,000/-	5,000/-	Confirmed
5.	Damages to clothes	1,000/-	1,000/-	Confirmed
6.	Damages for mental and physical shock	5,000/-	5,000/-	Confirmed
7.	Transportation	1,000/-	1,000/-	Confirmed
	Total	Rs.45,599/- rounded off to Rs.45,600/-	Rs.90,599/- rounded off to Rs.90,600/-	Enhanced by Rs.45,000/-



9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.45,600/- is hereby enhanced to Rs.90,600/- 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.3699 of 2012 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai, 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 by making necessary applications before the Tribunal. It is made clear that the appellant is not entitled to any interest for the default period as per the order of this Court dated 25.09.2019 made in C.M.P.No.17278 of 2019 in C.M.A.No.SR.95567 of 2019. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk

To

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

Copy To

The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.K.V.Muthuvisakan, Advocate SR.No.9415

C.M.A.No.3748 of 2019

GJ(CO)
GN(26/11/2021)