

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3239 of 2019

Prakasam

.. Appellant

Vs.

1.Shanmugam

2.Iffco-Tokio General Insurance Co. Ltd.,
No.138/2, II Floor, LMR Shopping Arcade,
Opp. MGM Theatre, Salem Main Road,
Namakkal.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.03.2019, made in M.C.O.P. No.519 of 2014, on the file of the Sub Court, (Motor Accident Claims Tribunal) Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran
for M/s. C.Paraneedharan

For Respondents: No appearance (For R1)

Mrs.K.Saraswathi (For R2)
for Mr.C.R.Krishnamoorthy

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of compensation granted by the award dated 28.03.2019, made in M.C.O.P. No.519 of 2014, on the file of the Sub Court, (Motor Accident Claims Tribunal) Tiruchengode.

2.The appellant-claimant filed M.C.O.P. No.519 of 2014, on the file of the Sub Court, (Motor Accident Claims Tribunal) Tiruchengode, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.12.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the 1st respondent, rider-cum-owner of the Motorcycle and directed the 2nd respondent, as insurer of the offending vehicle, to pay a sum of Rs.1,24,253/- 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 in the award dated 28.03.2019, made in M.C.O.P. No.519 of 2014, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant suffered head injury and fracture at left clavicle. He has taken treatment as in-patient at Krishna Hospital, Tiruchengode, from 31.12.2013 to 22.01.2014, for a period of 23 days. He underwent surgeries and plates and screws were fixed. The Medical Board examined the appellant and certified that the appellant suffered 5% disability. The Tribunal has awarded a meagre sum of Rs.15,000/- towards disability at the rate of Rs.3,000/- per percentage, instead of adopting multiplier method. The Tribunal ought to have awarded compensation towards loss of earning capacity. At the time of accident, the appellant was working as a Mason and was earning a sum of Rs.10,000/- per month. The Tribunal failed to award any amount towards loss of income during treatment period, attendant charges, loss of amenities and transportation to the Hospital. The amounts awarded by the Tribunal under other heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the nature of injuries and report of Medical Board marked as Ex.P7, in the absence of any evidence to prove that the appellant suffered functional disability, rightly adopted percentage method and granted compensation towards disability, which is in order. The total compensation awarded by the Tribunal is 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 contention of the appellant that in the accident he suffered head injuries and fracture. The Medical Board, examined the appellant and certified that the appellant suffered 5% disability. To prove the same, the appellant has marked the disability certificate as Ex.P7. The appellant has not filed any material to show that he suffered functional disability. In the absence of any material evidence to show that the appellant suffered functional disability and lost his earning capacity, the appellant is not entitled to compensation towards loss of earning, by adopting multiplier method. In view of the above materials, the award of the Tribunal granting compensation by adopting percentage method is proper and valid and he is not entitled to any enhancement towards disability and loss of earning power. For the injuries sustained in the accident, the appellant has taken treatment as in-patient at Krishna Hospital, Tiruchengode, from 31.12.2013 to 22.01.2014, for a period of 23 days. The Tribunal failed to award any amount towards attendant charges, loss of amenities and transportation to Hospital. Considering the nature of injuries and period of treatment taken, a sum of Rs.20,000/-, Rs.25,000/- and Rs.10,000/- are granted towards loss of amenities, attendant charges and transportation to Hospital respectively. The Tribunal has awarded a meagre sum of Rs.10,000/- towards extra nourishment. Considering the nature of injuries suffered by the appellant, the same is enhanced to Rs.25,000/-. The Tribunal failed to award any amount towards damages to clothes. Hence, a sum of Rs.2,000/- is granted towards damages to clothes.

9. It is the contention of the appellant that at the time of accident, he was working as a Mason and was earning a sum of Rs.30,000/- per month. He failed to prove the same. The accident is of the year 2013. In the absence of any material evidence to prove the avocation and income, a sum of Rs.10,000/- per month is fixed as the notional income. Due to the injuries suffered in the accident, the appellant would not have worked at least for a period of two months. Hence, a sum of Rs.20,000/- (Rs.10,000/- x 2 months) is granted towards loss of income, at the rate of Rs.10,000/- per month for two months. 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.	Permanent Disability	15,000/-	15,000/-	Confirmed
2.	Medical expenses	84,253/-	84,253/-	Confirmed
3.	Pain and sufferings and mental agony	15,000/-	15,000/-	Confirmed
4.	Extra nourishment	10,000/-	25,000/-	Enhanced
5.	Attendant charges	-	25,000/-	Granted
6.	Loss of amenities	-	20,000/-	Granted
7.	Loss of income	-	20,000/-	Granted
8.	Transportation	-	10,000/-	Granted
9.	Damage to clothes	-	2,000/-	Granted
	Total	1,24,253/-	2,16,253/-	Enhanced by Rs.92,000/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,24,253/- is enhanced to Rs.2,16,253/- 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.519 of 2014, 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, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

gsa

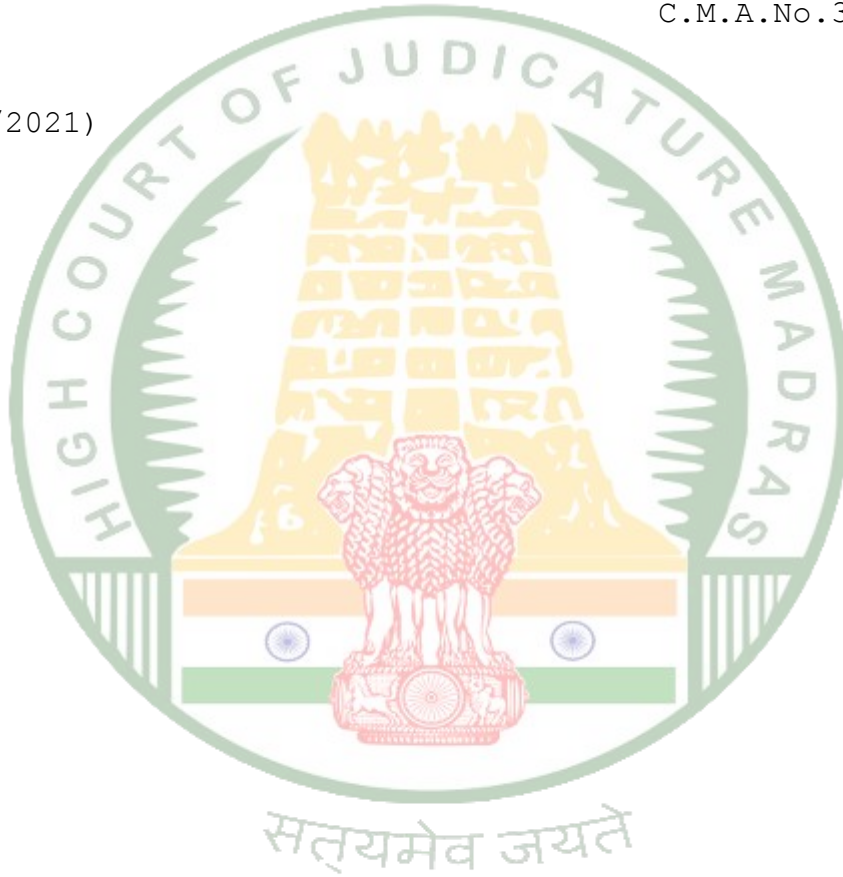
To

The Subordinate Judge,
(Motor Accident Claims Tribunal),
Tiruchengode.

+lcc to Mr.C.R.Krishnamoorthy, Advocate SR.No.1385

C.M.A.No.3239 of 2019

GMR (CO)
GMY (11/05/2021)



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