

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2016

(Orders Reserved on : 14.11.2016)

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.201 of 2010

Nallusamy.M.

.. Appellant/Claimant

.. Vs ..

1. Chindamani
2. The New India Assurance Company Ltd.,
Divisional Office, Premier Complex,
Five Roads, Salem - 636 016. ... Respondents /Respondents
(First respondent set ex-parte in the Tribunal)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award passed by the Motor Accidents Claims Tribunal-cum-Chief Judicial Magistrate, Salem, in M.C.O.P.No.460 of 2007, dated 16.04.2009.

For Appellant : Mr.Tranquebar Doraivasu
for Mr.K.Kuppusamy
For R-1 : Ex-party
For R-2 : Mrs.R.Sreevidhya

JUDGMENT

Aggrieved against the award passed by the Motor Accidents Claims Tribunal-cum-Chief Judicial Magistrate, Salem, in M.C.O.P.No.460 of 2007, dated 16.04.2009, the claimant had preferred this appeal to enhance the compensation awarded by the Tribunal.

2. The appellant as a claimant has filed a claim petition in M.C.O.P.No.460 of 2007 before the learned Chief Judicial Magistrate, Motor Accidents Claims Tribunal, Salem, for the injuries sustained by him against the respondents herein. The Tribunal, after considering the evidence and after hearing the arguments of both sides, awarded a sum of Rs.12,61,892/- towards damages to the appellant. Aggrieved against the said award passed by the Tribunal, the present appeal is preferred by the appellant seeking enhancement of the claim.

3. The learned counsel appearing for the appellant/claimant would mainly contend that in this case, the Tribunal, without any basis, deducted Rs.38,000/- towards

personal expenses of the claimant and for petrol expenses of his two wheeler and calculated the compensation amount. Further, the Tribunal ought to have fixed the salary of the claimant as Rs.25,000/-. It is further contended that the Tribunal is erred in deducting 1/3 towards personal expenses of the claimant. Further, the Tribunal failed to see that the personal living expenses of the claimant is very minimal in this case. Considering the above, the award passed by the Tribunal has to be set aside and the civil miscellaneous appeal has to be allowed by enhancing the compensation as claimed in the petition.

4. The learned counsel appearing for the second respondent-insurance company would mainly contend that the Tribunal, after considering the oral and documentary evidence adduced on the side of the claimant, awarded just compensation and therefore, there is no necessity to enhance the compensation amount and hence, the learned counsel submitted that there is no illegality or infirmity or perversity in the order passed by the Tribunal and therefore, the order of the Tribunal has to be confirmed and the civil miscellaneous appeal has to be dismissed.

5. This Court has considered the submissions made by the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent and perused the records.

6. In this case, the Tribunal held that after the disability, the claimant has to work in a mechanical shop and he will earn Rs.16,000/- per month and yearly, he will earn Rs.1,92,000/-. In the said amount, the Tribunal deducted 1/3 amount i.e., Rs.64,000/- towards his family expenses and Rs.38,000/- towards personal expenses of the claimant and petrol expenses to his vehicle and fixed the income of the claimant as Rs.90,000/- per annum for calculating the compensation for the loss of income and for permanent disability. This Court is of the considered view that the deduction made by the Tribunal at Rs.38,000/- towards personal expenses of the claimant and for petrol and other expenses is too high and the said amount has to be reduced. This Court is of the considered view that for the petrol and other expenses, a sum of Rs.18,000/- has to be deducted. Hence, from the amount of Rs.1,92,000/-, a sum of Rs.64,000/- for the family of the claimant and Rs.18,000/- towards personal and petrol expenses of the claimant has to be deducted and the remaining amount of Rs.1,10,000/- has to be fixed as annual income of the claimant for calculating the compensation and loss of income has to be calculated as follows:-

$$\text{Rs.1,10,000} \times 60/100 \times 17 = 11,22,000/-.$$

7. Further, the Tribunal correctly fixed 60% of disability. The Tribunal, after considering the evidence, appropriately awarded a sum of Rs.25,000/- for pain and sufferings, a sum of Rs.5,000/- for transport expenses, a sum of Rs.5,000/- for extra nourishment, a sum of Rs.5,000/- for attendant charges, a sum of Rs.1,81,392/- for medical expenses, a sum of Rs.22,500/- for loss of income for three months and a sum of Rs.1,00,000/- for future expenses and the said amount are confirmed.

8. Considering the injuries sustained by the claimant and also the period of treatment and pain and sufferings suffered by the claimant, this Court is of the considered view that the compensation awarded by the Tribunal has to be modified and enhanced as follows:-

Loss of income	-	Rs.11,22,000/-
Pain and sufferings	-	Rs. 25,000/-
Transport expenses	-	Rs. 5,000/-
Extra nourishment	-	Rs. 5,000/-
Attendant charges	-	Rs. 5,000/-
Medical expenses	-	Rs. 1,81,392/-
Loss of income for three months	-	Rs. 22,500/-
Future expenses	-	Rs. 1,00,000/-
		Rs. 14,65,892/-

Rounded off to Rs.14,66,000/-

Hence, the appellant/claimant is entitled for the enhanced compensation of Rs.14,66,000/-.

9. In the result, the Civil Miscellaneous Appeal is allowed and the compensation already awarded by the Tribunal is enhanced to Rs.14,66,000/- from Rs.12,61,892/-. The second respondent-insurance company is directed to pay the enhanced compensation amount to the appellant/claimant together with interest at 7.5% per annum from the date of petition till the date of deposit. Since the appellant/claimant has restricted his claim in the appeal to Rs.1,00,000/-, he is directed to pay additional court fee for the enhanced amount awarded by this Court. There shall be no order as to costs.

Sd/-
Asst.Registrar (CO)

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Sub Asst. Registrar

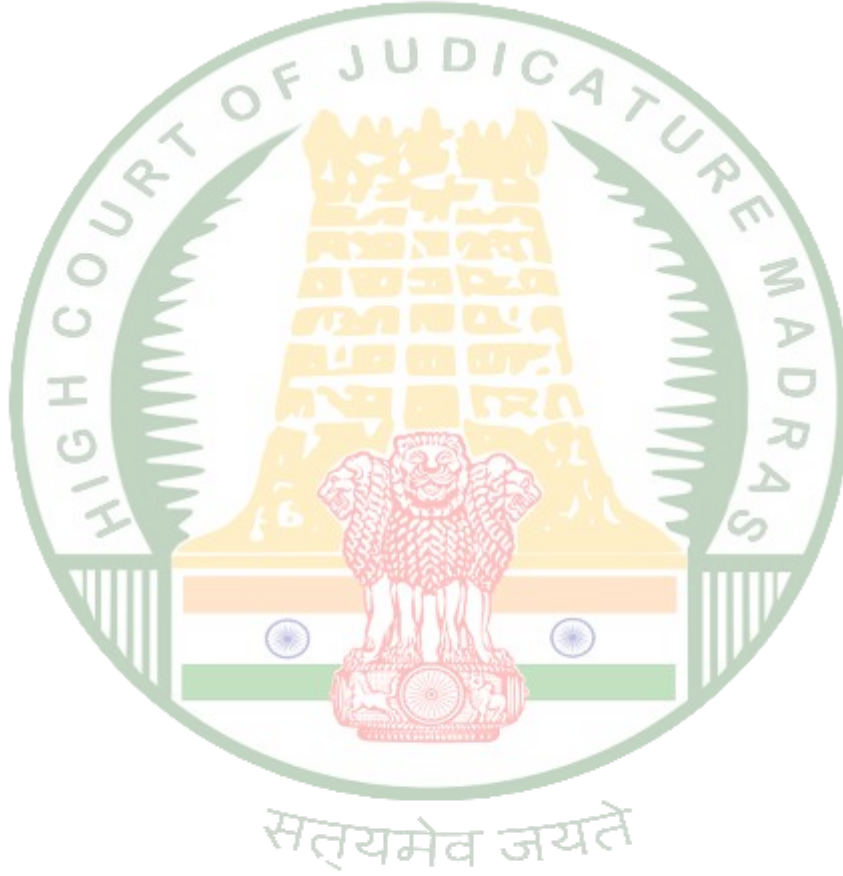
To

The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Salem.

+1 cc to m/s.Sreevidya,advocate.sr.69991.

mg(co)
krd 28/12

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