

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1896 of 2015

Palanisamy

... Appellant

Vs.

1.Murugan

2.Deivanai

3.The Oriental Insurance Co-Ltd.,

City Branch Office - III,

295, West Masi Street, Madurai - 1.

... Respondents

(Notice to the first respondent given up
in this C.M.A.)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 19.12.2003 made in M.C.O.P.No.323 of 2002, on the file of the Motor Accidents Claims Tribunal/First Additional Sub Court, Erode.

For Appellant : Mr.P.Kavirinadan
for Mr.N.Manokaran

For R1 : Given up vide EB

For R2 : Mr.A.C.Santhanam

For R3 : Mr.S.Manohar

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 19.12.2003 made in M.C.O.P.No.323 of 2002 on the file of the Motor Accidents Claims Tribunal/First Additional Sub Court, Erode.

2.The appellant is claimant in M.C.O.P.No.323 of 2002 on the file of the Motor Accidents Claims Tribunal/First Additional Sub Court, Erode. He filed the above claim petition claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.01.2001.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident took place due to the rash and negligent driving by the driver of the lorry belonging to the second respondent and directed the respondents to pay a sum of Rs.2,17,500/- as compensation to the appellant, jointly and severally.

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

5.The learned counsel appearing for the appellant contended that the amounts awarded by the Tribunal are very meager. P.W.2/Doctor has deposed that the appellant suffered 80% permanent disability. The Tribunal reduced the same to 60% without any valid reason. The notional income fixed by the Tribunal at Rs.2,500/- is very meager. The Tribunal has not considered the evidence let in by the appellant with regard to income. The appellant was taking treatment for 40 days as in-patient in the hospital and was bed ridden for six months at home and he continued taking treatment at the time of filing of the appeal in the year 2005. The appellant lost interest in life and lost happiness in marital life and hence, prayed for enhancement of compensation.

6.Though the second respondent entered appearance through counsel, there is no representation on behalf of him at the time of hearing.

7.The learned counsel appearing for the third respondent/Insurance Company contended that the Tribunal has considered all the materials on record and has awarded a sum of Rs.2,17,500/- as compensation to the appellant, which is excessive. In the facts and circumstances of the case, there is no reason warranting interference for enhancement of compensation and prayed for dismissal of the appeal.

8.Heard the learned counsel for the appellant as well as the learned counsel appearing for the third respondent and perused the materials available on record.

9.From the materials on record, it is seen that the appellant contended that he was doing milk vending business and

also as an agricultural coolie, earning a sum of Rs.5,000/- per month. No acceptable evidence was let in by the appellant to substantiate this contention. In such circumstances, the Tribunal has fixed monthly income of the appellant at Rs.2,500/- per month and the same is not meager. P.W.2/Doctor deposed that the appellant has suffered 80% disability and gave Ex.P9/disability certificate. The contention of the learned counsel for the appellant is that due to the disability, the appellant is totally immobilized and even now, without the help of others, he is not able to walk and do his work. In support of his contention, he relied on the following Hon'ble Apex Court judgment reported in (2017) 3 Supreme Court Cases 351 in Sandeep Khanuja Vs. Atul Dande and Another:

"12.While applying the multiplier method, future prospects on advancement in life and career are taken into consideration. In a proceeding under Section 166 of the Act relating to death of the victim, multiplier method is applied after taking into consideration the loss of income to the family of the deceased that resulted due to the said demise. Thus, the multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased or that of the claimant, as the case may be. In injury cases, the description of the nature of injury and the permanent disablement are the relevant factors and it has to be seen as to what would be the impact of such injury/disablement on the earning capacity of the injured. This Court, in the case of U.P. State Road Transport Corporation & Ors. v. Trilok Chandra & Ors.(1996) 4 SCC 362 justified the application of multiplier method in the following manner:

"13. It was rightly clarified that there should be no departure from the multiplier method on the ground that Section 110-B of the Motor Vehicles Act, 1939 (corresponding to the present provision of Section 168 of the Motor Vehicles Act, 1988) envisaged payment of "just" compensation since the multiplier method is the accepted method for determining and ensuring payment of just compensation and is expected to bring uniformity and certainty of the awards made all over the country."

The multiplier system is, thus, based on the doctrine of equity, equality and necessity. A

departure therefrom is to be done only in rare and exceptional cases. "

10.The Tribunal has taken note of the evidence of P.W.2/Doctor, who has deposed that the right leg of the appellant was amputated below the knee and there are evidence to show that a surgery was conducted on the right hand of the appellant and there is no movement in the right hand, as the nerves have been cut off and reduced the percentage of disability to 60% from 80% on erroneous reason. From the evidence of P.W.2/Doctor, I hold that the appellant is entitled to compensation for 80% of disability. As per the Division Bench judgment of this Court reported in 2005 1 CTC 38 in United India Insurance Company vs. Veluchamy, while granting compensation for the injured person, lesser multiplier can be applied. By following the said judgment, the appellant is entitled to the following sum towards permanent disability:

Rs.2,500/- X 12 X 10 X 80/100 = Rs.2,40,000/-

11.From the materials on record, it is seen that the appellant has undergone surgery both on his right leg as well as right hand. According to the appellant, even now, without the help of others, he cannot able to walk and do his work. The Tribunal has not awarded any amounts towards pain and suffering and attendant charges. In such circumstances, the appellant would have suffered a lot of pain and suffering due to the surgeries and being an in-patient in the hospital, the appellant is entitled to a sum of Rs.30,000/- towards pain and suffering and Rs.25,000/- towards attendant charges. A sum of Rs.3,000/- towards extra nourishment and Rs.2,000/- towards transportation awarded by the Tribunal are meagre and the same are hereby enhanced to Rs.10,000/- each. The amounts awarded by the Tribunal under all other heads are just and reasonable and 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.	Medical expenses	75,000	75,000	confirmed
2.	Permanent disability	85,000	2,40,000	enhanced
3.	Loss of income	2,500	2,500	confirmed

4.	Transportation	2,000	10,000	enhanced
5.	Extra nourishment	3,000	10,000	enhanced
6.	Loss of earning capacity	50,000	50,000	Confirmed
7.	Pain and suffering	-	30,000	Awarded
8.	Attendant charges	-	25,000	Awarded
	Total	2,17,500	4,42,500	Enhanced by Rs.2,25,000 /-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,17,500/- is hereby enhanced to Rs.4,42,500/- with interest at the rate of 9% per annum from the date of petition till the date of realisation. It is made clear that the appellant/claimant shall not be entitled for any interest for the delay period in filing the appeal. The respondents are directed to deposit the enhanced award amount with interest jointly and severally, now determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the enhanced award amount, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

krk/kj
To

1. The Motor Accidents Claims Tribunal,
First Additional Sub Judge,
Erode.

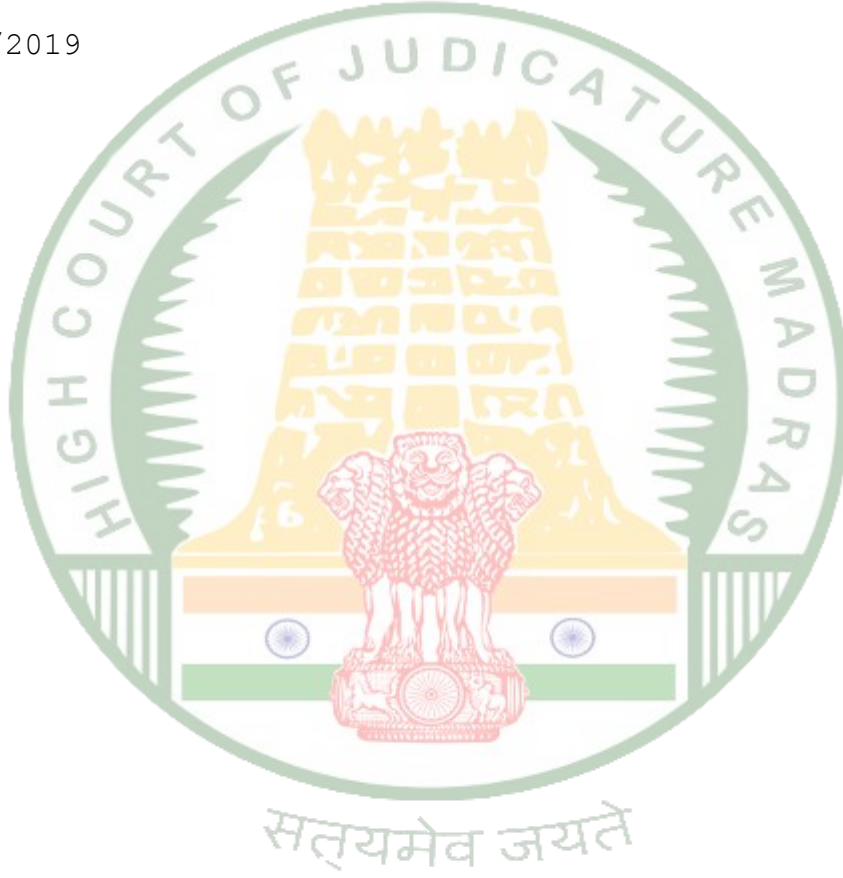
2.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate Sr.77517

+1cc to Mr.S.Manohar, Advocate Sr.77411

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