

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA No.2711 of 2016

Muthu @ Suresh Kumar Appellant/Petitioner

-vs-

1.Ponnuvel
2.The Branch Manager,
Shriram General Insurance Co. Ltd.,
No.66, 2nd Floor,
City Centre Complex,
T.Nagar, Chennai - 34. Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 12.08.2016 made in M.C.O.P.No.5105 of 2013 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.R.Nalliappan

For Respondents: Mr.S.Dakshinamoorthy for R2

J U D G M E N T

[Judgment of the Court was delivered by
R.SUBRAMANIAN, J.]

The claimant who was awarded a sum of Rs.3,79,300/- as compensation for the injuries suffered by him in a motor accident that occurred on 26.08.2013 is before us seeking enhancement.

2. The Tribunal has awarded the following amounts towards compensation:-

Sl.No.	Heads	Amount (Rs.)
	Pecuniary Loss	
1.	Loss of Income	52,488

Sl.No.	Heads	Amount (Rs.)
2.	Attender Charges	13,608
3.	Transport to Hospital	10,000
4.	Extra Nourishment	50,000
5.	Damage to Clothing	1,000
6.	Medical Bills	2,173
	Non Pecuniary Loss	
1.	Pain and Suffering	60,000
2.	Damages for Mental and Physical Shock	20,000
3.	40% disability @ Rs.3,000/-	1,20,000
4.	Disfigurement	25,000
5.	Loss of amenities	25,000
	Total	Rs.3,79,269

Rounded off to Rs.3,79,300/-

3. Mr.Nalliappan, learned counsel for the appellant would contend that considering the avocation of the appellant viz., Welder and the injuries caused, the Tribunal should have awarded certain amount under the head Future Loss of Earning Power. The appellant was referred to the Medical Board. The Director of Rajiv Gandhi Government General Hospital, Chennai has certified his disability at 60%. The appellant was also referred to the Government Mental Health Hospital, Kilpauk, where the Head of the Department had given a report stating that the verbal and performance intelligence of the appellant have been affected due to the accident. His IQ level is said to be at 76 with history of RTA and seizure episode. Considering the overall circumstances, we are of the opinion that disability caused to the appellant could be safely taken at 70%.

4. Considering the avocation of the appellant namely Welder, disability would definitely have a direct bearing on his future earning power. Unfortunately, the Tribunal has not adverted to this aspect at all. We are therefore of the opinion that the Award of the Tribunal has to be re-worked. The monthly income of the appellant is taken at Rs.9,000/- per month. Adding 40% towards future prospects, the monthly income works out to Rs.12,600/-. The appellant was aged about 36 at the time of accident. Therefore, the multiplier of "15" should be adopted. Thus, worked out, the total loss of earning power comes to Rs.22,68,000/-.

5. We have already found that functional disability caused is about 70%. Therefore, the appellant would be entitled to 70% of Rs.22,68,000/- as compensation for loss of earning power, which works out to Rs.15,87,600/-. The permanent disability caused is about 70% and the appellant is entitled to a sum of Rs.3,000/- per percentage of disability, which works out to Rs.2,10,000/-. The Tribunal has found that the appellant had lost income for about 243 days. We have fixed his monthly income at Rs.9,000/- i.e, Rs.300/- per day. Hence, the claimant would be entitled to Rs.72,900/- towards loss of income during the period of treatment. The Tribunal has granted a sum of Rs.13,608/- towards attender charges. Considering the number of days for which the appellant was inpatient, attender charges is enhanced to Rs.30,000/-. The Tribunal has granted a sum of Rs.50,000/- towards Extra Nourishment. This seems to be on the higher side. Hence, we reduce the same to Rs.20,000/-. The Tribunal has awarded a sum of Rs.60,000/- towards pain and suffering. The Tribunal has recorded a finding that the appellant was inpatient for 63 days and he was taking treatment for about 243 days. Therefore, the compensation for pain and suffered is enhanced to Rs.1 lakh. The compensation awarded under other heads are confirmed.

6. Thus, the total compensation is as follows :-

Sl.No.	Heads	Amount (Rs.)
	Pecuniary Loss	
1.	Loss of Income	72,900
2.	Attender Charges	30,000
3.	Transport to Hospital	10,000
4.	Extra Nourishment	20,000
5.	Damage to Clothing	1,000
6.	Medical Bills	2,173
	Non Pecuniary Loss	
1.	Loss of Earning power	15,87,600
2.	Pain and Suffering	1,00,000
3.	Damages for Mental and Physical Shock	20,000
4.	70% disability @ Rs.3,000/-	2,10,000
4.	Disfigurement	25,000
5.	Loss of amenities	25,000

Sl.No.	Heads	Amount (Rs.)
	Total	21,03,673

Rounded off to Rs.21,00,000/-

7. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

(i) The award of the Tribunal is enhanced from Rs.3,79,300 /- to Rs.21,00,000/-.

ii) The second respondent/Insurance Company is directed to deposit the enhanced award amount, less the amount, if already deposited with interest at the rate of 7.5% with proportionate costs within a period of six weeks from the date of receipt of a copy of this judgment.

iii) On such deposit, the Tribunal is directed to deposit Rs.5 lakhs each in any one of the nationalised banks in an interest bearing Fixed Deposit in the name of the two minor children of the claimant/appellant till they attain majority. We are informed that the minors are aged 11 and 9 years as on today. The remaining amount of Rs.11,00,000/- is directed to be paid over to the claimant. The appellant is also permitted to withdraw the quarterly interest from out of the Fixed deposit for the maintenance of the minors.

iv) The appellant is directed to furnish the details of the minor children to the Tribunal.

v) The appellant/Claimant shall pay necessary court fee, if any, for the enhanced compensation amount.

No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

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

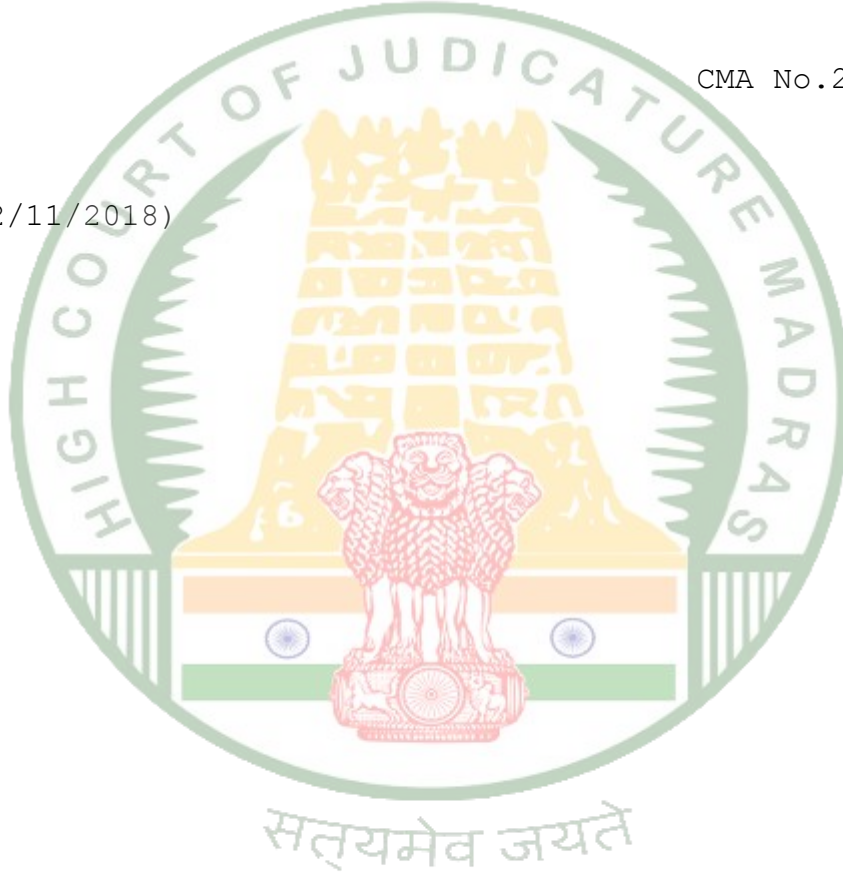
2. The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+lcc to Mr.R.Nalliyappan, Advocate, S.R.No. 59748

+lcc to Mr.S.Dhakshnamoorthy, Advocate, S.R.No. 60223

CMA No.2711 of 2016

SKV (CO)
GN (12/11/2018)



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