

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2018

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.3003 of 2010

K. Rajendran

.. Appellant

Vs

1. A.Rajendran,
 2. The New India Assurance Co.Ltd.,
Divisional Office, Premier Complex,
Five Roads, Salem - 16.
 3. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Salem Region, Ramakrishna Road,
Salem - 7.
[Respondents 1 and 3 remained
ex-parte before the Tribunal]
- .. Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award and decree passed in M.C.O.P. No.83 of 2008 dated 22.03.2010 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Salem.

For Appellant : Mr.K.Kuppusamy

For Respondents : Mr.J.Chandran [for R2]

J U D G M E N T

The instant appeal has been filed by the claimant seeking enhancement of the compensation under the impugned Award dated 22.03.2010 passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court, Salem), in M.C.O.P.No.83 of 2008.

2. The brief facts leading to the filing of the instant appeal are as follows:-

(i) The Appellant sustained injuries as a result of an accident caused by a lorry bearing Registration No.TN-29-B-6535 owned by the first respondent and insured with the second respondent. The Appellant was the driver of the bus bearing

Registration No.TN-27-N-1387 owned by the third respondent/Transport Corporation at the time of the accident. The Appellant preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.83 of 2008 seeking a compensation of Rs.5,00,000/-.

(ii) The Motor Accident Claims Tribunal by its Award dated 22.03.2010 passed in M.C.O.P.No.83 of 2008 directed the second respondent to pay the Appellant a sum of Rs.1,16,026/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization.

3. Aggrieved by the Award dated 22.03.2010 passed in M.C.O.P.No. 83 of 2008, the instant Appeal has been filed by the claimant seeking enhancement of compensation.

4. Heard Mr.K.Kuppusamy, learned counsel for the Appellant and Mr.J.Chandran, learned counsel for the second respondent.

5. According to the learned counsel for the Appellant, the Tribunal has erred in awarding only a sum of Rs.1,16,026/- as against the claim of Appellant for Rs.5,00,000/-. According to him, the Tribunal has also erred in holding that the Appellant sustained only 30% disability, whereas the Appellant sustained 35% disability and hence, he is entitled to Rs.70,000/- towards permanent disability.

6. Per contra, learned counsel for the second respondent/ Insurance company would submit that the quantum of compensation awarded to the Appellant is a just compensation, considering his avocation and the nature of injuries sustained by him as a result of the accident.

7. This Court, after having considered the materials available on record and after having examined the impugned award and after hearing the submissions of the respective counsels, observes the following:

(a) The Appellant has sustained fracture of Right Knee and has also sustained multiple injuries all over the body as a result of the accident.

(b) It is an undisputed fact that the Appellant was a driver employed by the third respondent/Transport Corporation and he was the person who was driving the bus which was also involved in the accident along with the lorry owned the second respondent.

8. The Tribunal has without any basis assessed the disability of Appellant at 30%, even though the disability certificate produced by the Appellant before the Tribunal which was marked as Ex.P.7 discloses that the Appellant suffered 35%

disability. Considering the nature of injuries sustained by the Appellant, this Court is of the considered view that the injuries sustained by him would have impaired him from performing his duty as a driver for a period of time.

9. In the light of the above observations, this Court is of the considered view that the Tribunal ought to have awarded a higher compensation for the Appellant towards Attender charges, Pain and Suffering, disability. Further, the Tribunal ought to have awarded some amount of compensation towards loss of amenities. In the considered view of this Court, the compensation awarded to the Appellant will have to be enhanced to Rs.1,56,026/- as detail below:-

Sl.No.	Head	Amount Awarded by the Tribunal (in Rs.)	Amount Awarded by the Court (in Rs.)
1	Transport	5,000.00	10,000.00
2	Extra Nourishment	5,000.00	10,000.00
3	Medical Expenses	31,026.00	31,026.00
4	Attender Charges	5,000.00	10,000.00
5	Pain and Suffering	10,000.00	20,000.00
6	Disability	60,000.00	70,000.00
7	Loss of amenities	-	5,000.00
	Total	1,16,026.00	1,56,026.00

10. In the result, the Civil Miscellaneous Appeal is Partly Allowed without costs as follows:-

(i) The Award passed by the Tribunal is modified by enhancing the compensation to Rs.1,56,026/- from Rs.1,16,026/-.

(ii) The second respondent/Insurance Company is directed to deposit the modified Award amount together with interest at the rate of 7.5% per annum, after deducting the amount if any already deposited by them, to the credit of M.C.O.P.No.83 of 2008 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Salem, within a period of four weeks from the date of receipt of a copy of the order.

(iii) On such deposit being made, the Appellant is permitted to withdraw the amount lying to the credit of M.C.O.P.No.83 of 2008 on the file of the Motor

Accident Claims Tribunal (Chief Judicial Magistrate Court), Salem, along with accrued interest by filing an appropriate application.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

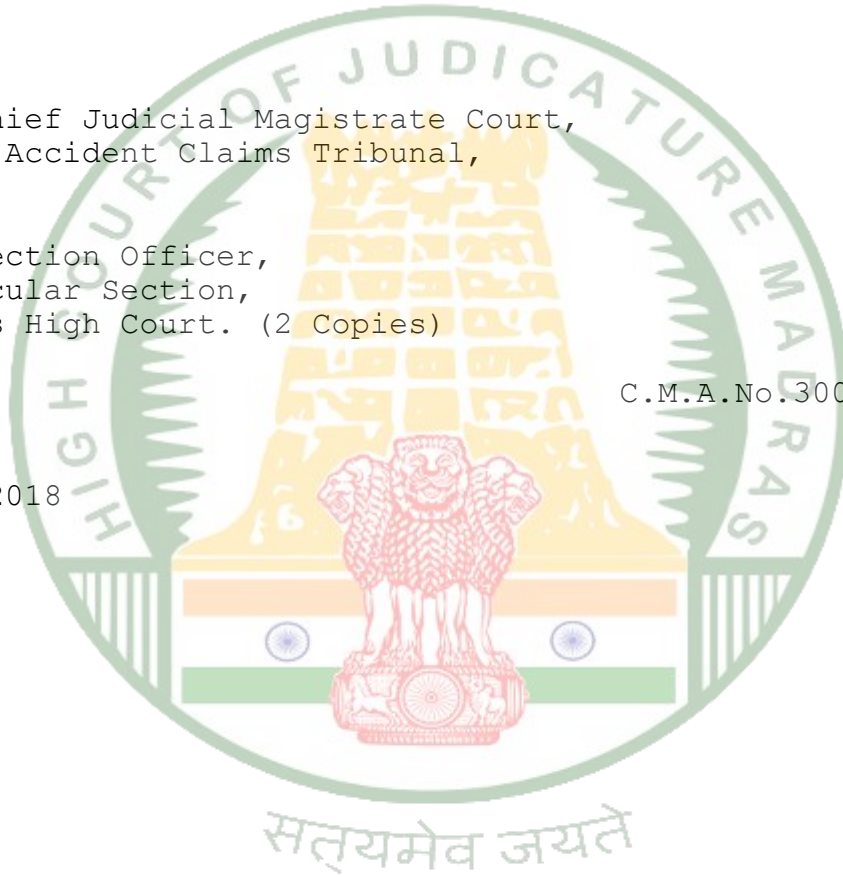
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To

1. The Chief Judicial Magistrate Court,
Motor Accident Claims Tribunal,
Salem.
2. The Section Officer,
Vernacular Section,
Madras High Court. (2 Copies)

C.M.A.No.3003 of 2010

RJI (CO)
CS/25/10/2018



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