

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2591 of 2018

Manickam

.. Appellant/Claimant

Vs.

1.Dhanasigh

2.The Oriental Insurance Co. Ltd.,

Gopalrao building, TownHall Road,

Kumbakonam,

Thanjavur District.

.. Respondents/Respondents

(R1 set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 24.06.2016 made in M.C.O.P.No.2 of 2011, on the file of Chief Judicial Magistrate, (Motor Accidents Claims Tribunal), Ariyalur.

For Appellant : Mr.S.Kaithamalai Kumaran

For R2 : Mr.S.Partheeban
for M/s.M.Krishna Moorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 24.06.2016 made in M.C.O.P.No.2 of 2011, on the file of Chief Judicial Magistrate, (Motor Accidents Claims Tribunal), Ariyalur.

2.By consent of both the parties, this appeal is taken for final disposal at the admission stage itself.

3.The appellant is the claimant in M.C.O.P.No.2 of 2011, on the file of Chief Judicial Magistrate, (Motor Accidents Claims Tribunal), Ariyalur. He filed the above claim petition, claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.08.2010.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident took place only due to the rash and negligent driving by the driver of the car belonging to the first respondent and directed the second

respondent to pay a sum of Rs.1,91,000/- as compensation and recover the same from the owner of the car/first respondent.

5. Not being satisfied with the compensation awarded by the Tribunal, the appellant has come out with this appeal, seeking enhancement.

6. The learned counsel appearing for the appellant contended that the amounts awarded by the Tribunal under the head of permanent disability and other heads are very low. The Tribunal ought to have considered the age and avocation of the appellant and awarded compensation by adopting the multiplier method.

7. Per contra, Mr. S. Partheeban, learned counsel representing Mr. M. Krishna Moorthy, learned counsel appearing for the second respondent contended that the appellant was taking treatment as in-patient only for six days. The accident took place on 27.08.2010. In any event, the Tribunal fixed the notional income of the deceased at Rs.6,000/- per month and granted compensation. The Tribunal considering the evidence of P.W.2-Doctor, has fixed the percentage of disability as per the Disability Certificate issued by P.W.2-Doctor and awarded compensation of Rs.82,000/-, at the rate of Rs.2,000/- per percentage and the same is proper. The amounts awarded under different heads are not meager and the appellant has not proved that he has suffered any loss of income and functional disability and prayed for dismissal of the appeal.

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

9. From the materials on record, it is seen that P.W.2-Doctor deposed that due to head injury and due to removal of small portion of the bone on the head, the appellant may get injured at any time and his face is disfigured. The Doctor has not certified that the appellant is disabled functionally. In such circumstances, the amount awarded by the Tribunal for permanent disability at the rate of Rs.2,000/- per percentage as per the Disability Certificate is proper and the multiplier method need not be adopted. The Tribunal has fixed notional income of the appellant at Rs.6,000/- per month and awarded a sum of Rs.18,000/- as loss of income for three months. The same is meager and hence, it is enhanced to a sum of Rs.36,000/- for six months at the rate of Rs.6,000/- per month. Due to the nature of injuries and disability suffered, the earning capacity of the appellant would have been reduced and hence, a sum of Rs.25,000/- is granted towards loss of earning capacity. A sum of Rs.10,000/- awarded by the Tribunal towards extra nourishment is meager and the same is enhanced to a sum of Rs.25,000/-. The

amounts awarded under other heads are 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.	Disability	82,000/-	82,000/-	confirmed
2.	Pain and suffering	50,000/-	50,000/-	confirmed
3.	Transportation	20,000/-	20,000/-	confirmed
4.	Loss of income	18,000/-	36,000/-	enhanced
5.	Extra nourishment	10,000/-	25,000/-	enhanced
6.	Attender charges	10,000/-	10,000/-	confirmed
7.	Damages to clothes	1,000/-	1,000/-	confirmed
8.	Loss of earning capacity	-	25,000/-	granted
	Total	1,91,000/-	2,49,000/-	Enhanced by Rs.58,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is enhanced to Rs.2,49,000/- with proportionate interest and costs. The second respondent-Insurance Company is directed to deposit the enhanced award amount, with interest, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order and recover the same from the first respondent/owner of the car, as directed by the Tribunal. The appellant/claimant is permitted to withdraw the award amount with interest and costs, after adjusting the amount, if any, already withdrawn. It is made clear that the appellant shall not be entitled for any interest for the delay period in filing the appeal. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

krk/gsa

To

1.The Chief Judicial Magistrate,
(Motor Accidents Claims Tribunal), Ariyalur.

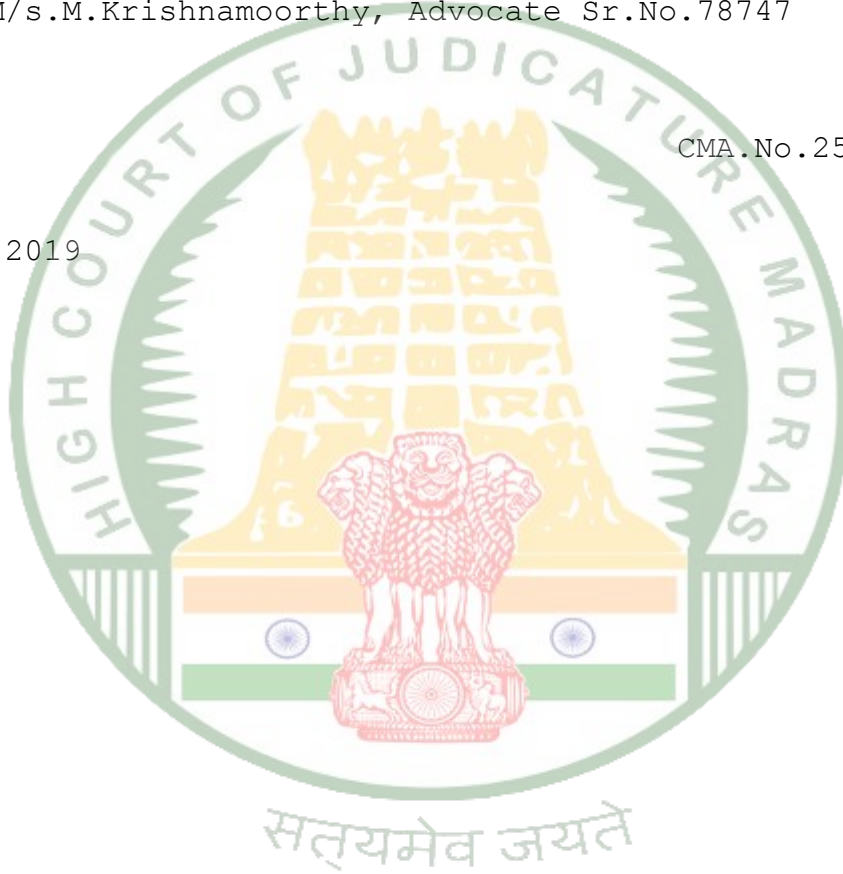
2.The Oriental Insurance Co. Ltd.,
Gopalrao building, TownHall Road,
Kumbakonam, Thanjavur District.

+1 cc to M/s.S.Kaithamalai Kumaran, Advocate Sr.No.78601

+1 cc to M/s.M.Krishnamoorthy, Advocate Sr.No.78747

CMA.No.2591 of 2018

VSN-II (CO)
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