



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Sixteenth day of April Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice K.RAVICHANDRABAABU

and

The Hon`ble Mrs.Justice T.KRISHNAVALLI

CMP(MD) No.160 of 2018

IN

CMA(MD) No.SR314 of 2018

P.MURALI

... PETITIONER/APPELLANT

Vs

1 SUBBULAKSHMI LAKSHMIPATHI FOUNDATION,
R.L.INSTITUTE OF MANAGEMENT STUDIES,
NO.27, SRI RAM SATHIYA SAI NAGAR, MADURAI.

2 THE NATIONAL INSURANCE COMPANY LIMITED,
THROUGH ITS REGIONAL MANAGER, REGIONAL OFFICE,
NO.3, NORTH VELI STREET, MADURAI. ... RESPONDENTS/RESPONDENTS

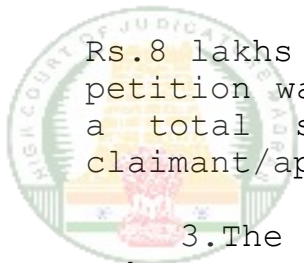
Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to permit the petitioner / appellant to enhance the compensation amount of Rs.60,00,000/- instead of Rs.8,00,000/- as claimed in MCOP.No.743 of 2010 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Madurai.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.T.C.S.RAJACHOCKALINGAM, for M/S.A.SARAVANAN Advocate for the petitioner and of MR.N.MURUGESAN, Advocate for R2 and R1 not appeared either in person or by an advocate the court made the following order:-

(Order of the Court was made by **K.RAVICHANDRABAABU, J**)

This Miscellaneous Application is filed seeking permission to the Petitioner/appellant to enhance the compensation claim as Rs.60,00,000/- (Rupees sixty lakhs only) instead of Rs.8 lakhs (Rupees eight lakhs only) as claimed in M.C.O.P.No.743 of 2010, on the file of the Motor Accident Claims Tribunal(Chief Judicial Magistrate), Madurai.

2.The appellant is the claimant and was working in Tamil Nadu Police Department as Head Constable. He met with an accident on 09.09.2009, which has culminated into filing a Motor Accident Claims Original Petition in M.C.O.P.No.730 of 2010, seeking compensation of



Rs.8 lakhs for the injury sustained by the claimant. The said claim petition was opposed by the Insurance Company. The Tribunal awarded a total sum of Rs.8,43,000/- as compensation payable to the claimant/appellant.

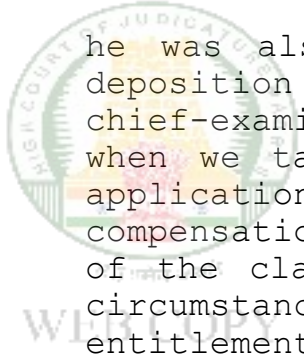
3.The present appeal is sought to be filed by the claimant for enhancement of compensation on the reason that the appellant, subsequent to the passing of the award, was medically invalidated from service due to the physical disability sustained resulting out of such accident and thus, the loss of income now suffered, would also have to be compensated by the Insurance Company. The appellant in support of such claim has made certain calculations and indicated certain figures on different heads. The correctness or otherwise of such claim of the appellant seeking for enhancement of compensation and to his entitlement for the same has to be gone into and decided only when the main appeal itself is taken up for final disposal. However, the present application is filed only for permitting the Petitioner to enhance the compensation amount from Rs.8 lakhs to Rs.60 lakhs, since his application before the Tribunal itself was only for Rs.8 lakhs.

4.The learned counsel for the Petitioner/appellant submitted that it is well-settled that even in the absence of any application, the Courts are empowered to enhance the compensation, if it is found that a just and fair compensation is liable to be paid to the claimant. He further submitted that such enhancement of compensation can be claimed even at the time of filing of the appeal. In support of his contention, the learned counsel relied on a decision of the Honourable Apex Court in 2003(2) SCC 274(Nagappa .vs. Gurdayal Singh and others), wherein, it is observed that in appropriate cases, the Court may permit amendment to the claim petition and that there are no fetters on the power of the Tribunal to award compensation in excess of the amount which is claimed in the application. The learned counsel further relied on 1990-1-LW 577(G.Govindan .vs. C.David and another), 2015 ACC 499 Delhi, 2014 ACJ 415(National Insurance Company Limited .vs. Ms.Vaishali Harish Devare and others Bombay) to contend that in the interest of justice and for arriving at a just and fair compensation, this application is liable to be considered favorably.

5.The Insurance Company, namely, the second respondent filed a counter affidavit and opposed the application. The counter affidavit proceeded to deal with the merits of the claim made by the appellant in respect of his claim for enhanced compensation. Though the counter proceeded so, the learned counsel for the Insurance Company fairly submitted that the decisions are in favour of the appellant/Petitioner for permitting amendment.

6.Heard both sides.

7.Previous Bench of this Court, while considering the present application, has directed the Petitioner/appellant to let in evidence in support of his claim. Accordingly he was examined in Chief on 16.3.2018 before the Registrar(Judicial) of this Court and



he was also cross-examined by the other side on 21.3.2018. The deposition made by the Petitioner/Appellant during such additional chief-examination and cross-examination is to be considered only when we take up the main appeal for hearing. Though the present application is filed for seeking permission to enhance the compensation amount, in effect, it is nothing but seeking amendment of the claim made in the Original Petition for the reasons and circumstances stated in the Petition. We already expressed that the entitlement of the Petitioner/appellant for such enhancement of compensation is to be considered and decided only when we hear the main appeal. Needless to state that merely allowing an amendment does not mean or to be construed as if the relief sought by way of amendment itself is allowed. Thus by considering the well-settled proposition that for determining a just and fair compensation, the claimant must be permitted to amend the claim, we are of the view that the present application needs to be allowed, so that the merits of the claim made by the Petitioner could be considered and decided when the appeal is taken up for final disposal, if the same is otherwise in order.

8.Considering the above stated facts and circumstances, the present application is allowed.

sd/-
16/04/2018

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

THE CHIEF JUDICIAL MAGISTRATE,
THE MOTOR ACCIDENT CLAIMS TRIBUNAL, MADURAI.

+1. C.C. to M/S.T.C.S.RAJACHOCKALINGAM Advocate SR.No.6294

ORDER
IN
CMP(MD) No.160 of 2018
IN
CMA(MD) No.SR314 of 2018
Date :16/04/2018

MKV-CM-VR-GSR/20.4.2018/3P-3C