

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1299 of 2015

V.Surendardas

.. Appellant

.Vs.

1.Ramu

2.Rajasekar

3.M/s.Royal Sundaram Alliance
Insurance Co. Ltd.,
Sundaram Towers,
Nos.45 & 46, Whites Road,
Chennai.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 06.11.2012, made in M.C.O.P.No.211 of 2008, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Arani.

For Appellant : Mr.K.Ramachandran
for Mr.J.Ashok

For R1 : No appearance

For R3 : Ms.C.Harini
for M/s.M.B.Raghavan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-claimant, seeking enhancement of the compensation granted by the award dated 06.11.2012, made in M.C.O.P.No.211 of 2008, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Arani.

2. The appellant-claimant filed M.C.O.P.No.211 of 2008, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Arani, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident

that took place on 14.01.2008.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver of the bus belonging to the 2nd respondent and directed the respondents to pay a sum of Rs.2,36,083/- jointly and severally as compensation to the appellant.

4.Not being satisfied with the amounts granted by the Tribunal in the award dated 06.11.2012, made in M.C.O.P.No.211 of 2008, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the appellant was an agriculturist and contractor and was earning a sum of Rs.10,000/- per month. The Tribunal erroneously fixed a meagre sum of Rs.3,000/- as the monthly income of the appellant. The accident is of the year 2008. The Tribunal ought to have fixed more amounts as monthly income of the appellant. P.W.2-Doctor has certified that the appellant suffered 45% disability. The Tribunal has granted only meagre sum of Rs.75,600/- for loss of earning capacity. The Tribunal has not awarded any amount for disability. The total amounts granted by the Tribunal is meagre and prayed for enhancement of the compensation.

7.Per contra, Ms.C.Harini, learned counsel appearing for the 3rd respondent-Insurance Company contended that the appellant failed to prove the avocation and income. The monthly income fixed by the Tribunal is proper. P.W.2-Doctor assessed 45% disability for a particular part of the body. The amounts granted by the Tribunal is not meagre and the appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the 3rd respondent and perused the materials available on record. Though notice has been served on the 2nd respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

9.From the materials on record, it is seen, the appellant has contended that he sustained grievous injury and fracture and he is unable to do any work as he was doing earlier and depending on others even to attend nature's call. The appellant has examined P.W.2-Doctor who deposed about the nature of injuries and certified that the appellant suffered 45% disability. The Tribunal considering the evidence of P.W.2-Doctor and disability certificate, held that P.W.2-Doctor assessed disability for a particular part of the body, fixed

disability for a particular part of the body and has not fixed for the whole body. The Tribunal fixing the notional income of the appellant at Rs.3,000/- per month, granted a sum of Rs.75,600/- for disability. The same is meagre. The accident is of the year 2008. The monthly income of the appellant is fixed at Rs.6,000/-. According to the appellant, he is aged 40 years. The multiplier applicable is '15'. The percentage of disability for the whole body is fixed at 15%. The compensation granted by the Tribunal towards disability is modified to Rs.1,62,000/- [Rs.6,000/- x 15 x 12 x 15%]. The Tribunal failed to grant any amount towards attender charges, loss of amenities and extra nourishment. Hence, a sum of Rs.10,000/- each is granted towards the said heads respectively. The amounts granted by the Tribunal under other heads are just and reasonable and the same 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	75,600/-	1,62,000/-	enhanced
2.	Pain and suffering	10,000/-	10,000/-	confirmed
3.	Medical expenses	1,47,483/-	1,47,483/-	confirmed
4.	Damages to clothes	1,000/-	1,000/-	confirmed
5.	Transportation	2,000/-	2,000/-	confirmed
6.	Extra nourishment	-	10,000/-	granted
7.	Attender charges	-	10,000/-	granted
8.	Loss of amenities	-	10,000/-	granted
	Total	2,36,083/-	3,52,483/-	Enhanced by Rs.1,16,400/-

10. In the result, the appeal is partly allowed and award granted by the Tribunal at Rs.2,36,083/- is enhanced to Rs.3,52,483/- along with interest and costs. The respondents are jointly and severally directed to deposit the enhanced award amount along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.211 of 2008. On such

deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. No costs.
gsa

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

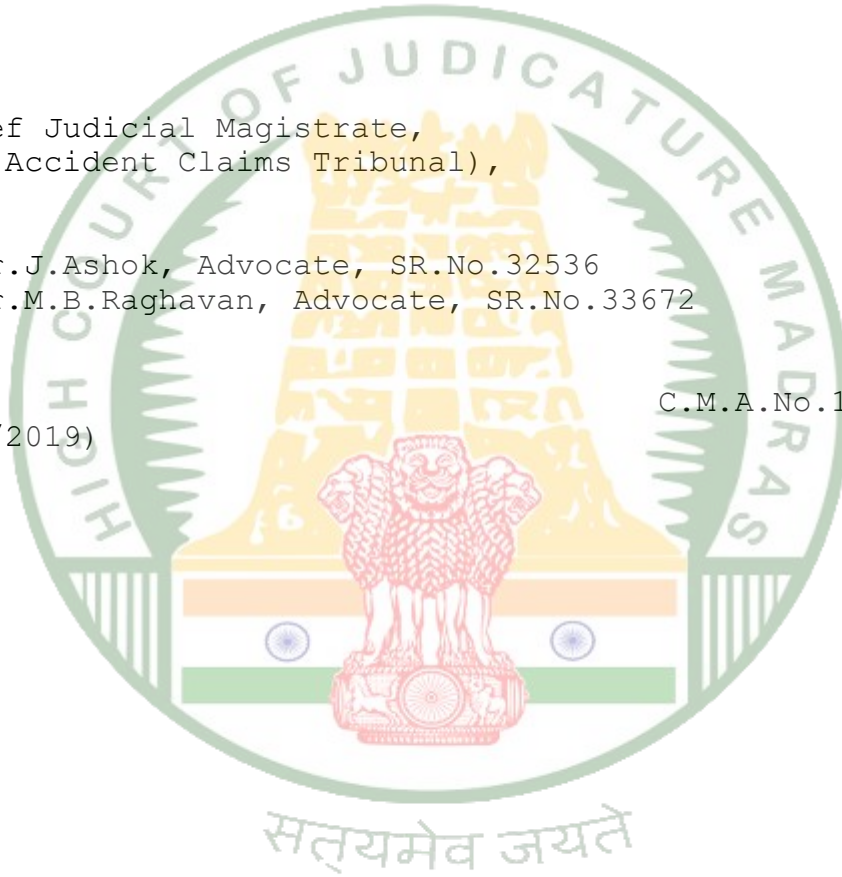
1.The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal),
Arani.

+1cc to Mr.J.Ashok, Advocate, SR.No.32536

+1cc to Mr.M.B.Raghavan, Advocate, SR.No.33672

C.M.A.No.1299 of 2015

Kak(29/07/2019)



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