



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1910 of 2015

Arunachalam

.. Appellant/Petitioner

Vs.

1.K.Varadharajan

(R1 remained exparte before Tribunal,  
hence notice may be dispensed with)

2.The Divisional Manager,

Oriental Insurance Company Limited,  
Divisional Office, Bharathidasan Salai,  
Tiruchirappalli.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.01.2015 made in M.C.O.P.No.63 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Namakkal.

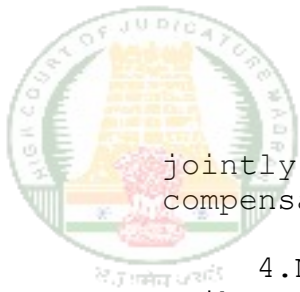
For Appellant : Mr.C.Kulanthaivel  
For R2 : Mr.P.Kandasamy

#### J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 23.01.2015 made in M.C.O.P.No.63 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Namakkal.

2.The appellant is the claimant in M.C.O.P.No.63 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Namakkal. He filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 16.10.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Eicher van belonging to the first respondent and directed the respondents



jointly and severally to pay a sum of Rs.1,38,038/- as compensation to the appellant.

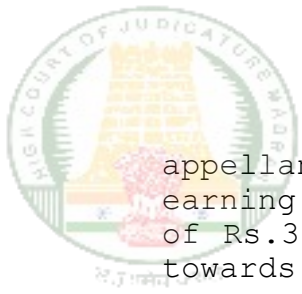
4. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the appellant is getting giddiness and there is loss of memory and he is unable to do any work as he was doing earlier. The appellant suffered 100% loss of earning power. The appellant was working as a watchman and was earning a sum of Rs.5,000/- per month. P.W.2/Doctor has deposed about the nature of injuries and percentage of disability. Considering the disability suffered by the appellant, P.W.2/Doctor has certified that the appellant suffered 39% disability. The Tribunal on erroneous ground reduced the percentage of disability to 25% and awarded meagre amount towards disability. The amount awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that P.W.2/Doctor has not properly assessed the percentage of disability and the disability certified by P.W.2/Doctor is not excessive. Initially P.W.2/Doctor fixed the percentage of disability at 31% and subsequently by over writing, enhanced the same to 39%. The appellant has not proved that he lost his job or earning power. Hence, he is not entitled to compensation by adopting multiplier method. The amounts granted by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

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

8. From the materials available on record it is seen that the appellant has contended that he sustained injuries in the head. He contended that due to the injuries, he lost his memory power and he is getting headache and unable to do any work. P.W.2/Doctor has deposed to that effect and certified that appellant suffered disability at 39%. The Tribunal took note of Ex.P11/disability certificate, wherein P.W.2/Doctor has corrected the percentage of disability from 31% to 39% and reduced the percentage of disability to 25% and granted compensation at the rate of Rs.2,000/- per percentage for 25% disability. The same is meagre. The appellant is entitled to compensation for 31% disability at the rate of Rs.3,000/- per percentage. The compensation awarded by the Tribunal towards disability is modified to Rs.93,000/- [Rs.3,000/- X 31]. The



appellant contended that he was working as watchman and was earning a sum of Rs.5,000/- per month. The Tribunal fixed a sum of Rs.3,000/- as monthly income and awarded a sum of Rs.9,000/- towards partial loss of earning for three months. The accident occurred in the year 2010. Considering the age and contention of the appellant, the monthly income fixed by the Tribunal is meagre and the same is fixed at Rs.5,000/- as claimed by the appellant. Due to the nature of injuries and disability, he would not have attended his work atleast for a period of 9 months and thus, the compensation awarded by the Tribunal towards partial loss of earning is modified to Rs.45,000/- [Rs.5,000/- X 9] at the rate of Rs.5,000/- per month. The Tribunal has awarded meagre sum of Rs.3,000/- and Rs.5,000/- towards extra nourishment and pain and sufferings and the same are hereby enhanced to Rs.10,000/- and Rs.15,000/- respectively. The appellant has taken treatment in different hospitals as in-patient for more than 20 days and the Tribunal has not granted any amount towards attendant charges. A sum of Rs.15,000/- is granted by this Court towards attendant charges. The Tribunal failed to grant any amount towards loss of amenities and loss of cloth. Hence, a sum of Rs.25,000/- towards loss of amenities and a sum of Rs.2,000/- towards loss of cloth are granted by this Court. The amounts awarded by the Tribunal towards transportation and medical expenses 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.    | Partial loss of earning | 9,000/-                         | 45,000/-                          | Enhanced                               |
| 2.    | Transportation          | 5,000/-                         | 5,000/-                           | Confirmed                              |
| 3.    | Extra nourishment       | 3,000/-                         | 10,000/-                          | Enhanced                               |
| 4.    | Medical expenses        | 66,038/-                        | 66,038/-                          | Confirmed                              |
| 5.    | Disability              | 50,000/-                        | 93,000/-                          | Enhanced                               |
| 6.    | Pain and sufferings     | 5,000/-                         | 15,000/-                          | Enhanced                               |
| 7.    | Loss of amenities       | -                               | 25,000/-                          | Granted                                |
| 8.    | Attendant charges       | -                               | 15,000/-                          | Granted                                |
| 9.    | Loss of cloth           | -                               | 2,000/-                           | Granted                                |
|       | Total                   | Rs.1,38,038/-                   | Rs.2,76,038/-                     | enhanced by Rs.1,38,000/-              |



9. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,38,038/- is hereby enhanced to Rs.2,76,038/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally directed to deposit the enhanced award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant is directed to pay the necessary Court fee if any, for the enhanced award amount now determined by this Court. No costs.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,  
Motor Accident Claims Tribunal,  
Namakkal.

Copy to:

The Section Officer,  
VR Section,  
High Court,  
Madras.

+1cc to Mr.C.Kulanthaivel, Advocate sr.34935  
+1cc to Mr.P.Kandasamy, Advocate sr.35057

C.M.A.No.1910 of 2015

rsi(co)  
nr 26/08/2019