

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2741 of 2015

T.M.Radhakrishnan

... Appellant/Claimant

Vs.

1.K.Dhanapal

2.M/s.New India Assurance Co. Ltd.,

No.16 A, G.S.T. Road,

Chengleput 603 001.

Now at Motor Third Party Claims Off.

No.45, Moore Street, Chennai - 600 001.

(R1 remained exparte before Tribunal)

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.09.2011 made in M.C.O.P.No.3626 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.II, Chennai.

For Appellant : Mr.T.G.Balachandran

For R2 : Mr.S.Manohar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 19.09.2011 made in M.C.O.P.No.3626 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.II, Chennai.

2.The appellant is the claimant in M.C.O.P.No.3626 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.II, Chennai. He filed the above said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 14.08.2008.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the sand lorry belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the vehicle to pay a sum of Rs.1,70,186/- as compensation to the appellant/claimant.

4.Not being satisfied with the award amount granted by the Tribunal dated 19.09.2011 made in M.C.O.P.No.3626 of 2008, 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 was aged 20 years and was working as a mechanic in UCAL company and was earning a sum of Rs.3,800/- per month. The appellant sustained grievous injuries in the accident and examined two doctors as P.W.2 and P.W.3. They have certified that appellant has suffered 30% ortho disability and 50% urethral disability totaling 80% of disability. Due to the two disabilities, suffered by the appellant, he lost his job and disabled functionally and could not do any work. The Tribunal ought to have applied multiplier method and awarded compensation. Due to the injuries, the appellant lost his marital prospects and the Tribunal has not awarded any amount towards marital life and loss of amenities. The appellant has taken treatment in the hospital as in-patient for 46 days and surgery was conducted and plates were fixed. The Tribunal has not granted any amount towards future medical expenses and towards attender charges. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

6.Per contra, Mr.S.Manohar, learned counsel appearing for the second respondent-Insurance Company contended that the appellant has not proved that he suffered disability for whole body and could not do any work due to the injuries. The percentage of disability certified by Doctors are excessive and cannot be treated as functional disability. The Tribunal considered all the above facts and awarded compensation based on percentage method for loss of income, which is proper. The amounts awarded by the Tribunal under different heads are not meager and appellant is not entitled for any enhancement and prayed for dismissal of the appeal.

7.I have heard the learned counsel appearing for the appellant as well as the second respondent-Insurance Company and perused all the materials available on record.

8. From the materials on record, it is seen that the appellant suffered fracture and underwent surgery. Plates and screws were implanted. The appellant examined ortho Doctor and General Physician. Both have totally certified that appellant suffered 80% disability. They have certified for parts of the body and not for whole body. The appellant has failed to produce any material to show that he is totally disabled and could not do any work. In such circumstances, the percentage method adopted by the Tribunal is proper. The Tribunal has granted Rs.45,000/- for 30% of disability and Rs.50,000/- for 50% of disability. Both are meager. The appellant is entitled to a sum of Rs.1,60,000/- (Rs.2,000/- x 80% = Rs.1,60,000/-) as compensation for 80% of disability at the rate of Rs.2,000/- per percentage.

9. The appellant was taking treatment in the hospital as in-patient for 46 days from 14.08.2008 to 01.10.2008. The Tribunal has not awarded any amount towards attender charges, loss of amenities, loss of cloth and loss of marital prospects. The Tribunal has awarded a sum of Rs.25,000/- towards pain and suffering, extra nourishment and transportation instead of awarding compensation separately. The compensation awarded by the Tribunal towards pain and suffering, extra nourishment and transportation are meager. Therefore, a sum of Rs.50,000/- towards pain and suffering, Rs.25,000/- towards extra nourishment and Rs.5,000/- towards transportation are granted by this Court. The Tribunal has awarded a sum of Rs.22,506/- towards loss of income for six months and the same is meager and the same is hereby enhanced to Rs.45,012/- for twelve months. A sum of Rs.25,000/- towards attendant charges, Rs.25,000/- towards loss of amenities, Rs.50,000/- towards marital prospects and Rs.20,000/- towards future medical expenses are granted by this Court. The amounts awarded by the Tribunal under other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent disability	95,000/-	1,60,000/-	enhanced
2.	Medical expenses	7,680/-	7,680/-	confirmed

3.	Pain and suffering	25,000/-	50,000/-	enhanced
	Extra Nourishment		25,000/-	enhanced
	Transportation		5,000/-	enhanced
4.	Loss of income	22,506/-	45,012/-	enhanced
5.	Future loss of income	20,000/-	20,000/-	confirmed
6.	Attendant charges	-	25,000/-	granted
7.	Loss of amenities	-	25,000/-	granted
8.	Martial prospects	-	50,000/-	granted
9.	Future medical expenses	-	20,000/-	granted
	Total	Rs.1,70,186/-	Rs.4,32,692/-	enhanced by Rs.2,62,506/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,70,186/- is hereby enhanced to Rs.4,32,692/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The second respondent-Insurance Company is 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. No costs.

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Sd/-
Assistant Registrar (CS VIII)

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Sub Assistant Registrar

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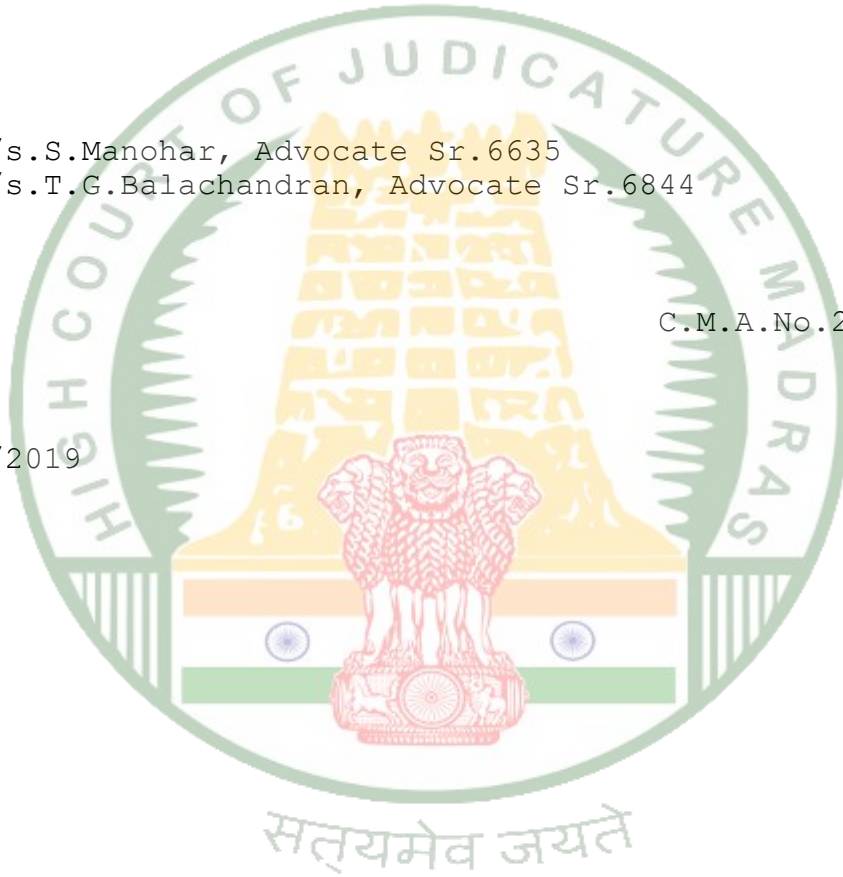
1.The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.II,
Chennai.

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

+1cc to M/s.S.Manohar, Advocate Sr.6635
+1cc to M/s.T.G.Balachandran, Advocate Sr.6844

C.M.A.No.2741 of 2015

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srg 31/07/2019



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