

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2800 of 2015

Paramasivam

... Appellant/ Petitioner

Vs

1.Nagarajan

2.Bajaj Alliance General Insurance Co. Ltd.,

No.25/26, Prince Tower,

4th Floor, College Road,

Chennai - 600 006.

... Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.03.2014 made in M.C.O.P.No.72 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Ariyalur.

For Appellant : Mr.C.Jagadish

For R2 : Mr.S.Arunkumar

J U D G M E N T
सत्यमेव जयते

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 20.03.2014 made in M.C.O.P.No.72 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Ariyalur.

2.The brief facts is as follows:

On 16.12.2010 at about 3.30 hours the petitioner was riding the tyre bullock cart with his son from south to north keeping left side of the road for purchasing hay-ricks at Rajendra Pattinam. The tyre cart came nearing the Thiruvaidainallur road, at that time 1st respondent's vehicle bearing Reg.No.TN-49-W-7669

came in backside with great speed in a rash and negligent manner forcefully dashed over the tyre cart. Due to the accident the petitioner sustained injuries in head, right knee, left shoulder, low jaw, ear and one bullock left leg was injured heavily and tyre cart also damaged. Immediately the petitioner was taken to Government Hospital, Jayankondam. Then he has admitted as in-patient for ten days at Sugam Multi Speciality Hospital, Kumbakonam. Thus the petitioner claimed a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident.

3.The 2nd respondent/Insurance Company denied the mode of accident as alleged in the claim petition. The respondent/Insurance Company contended that the petitioner loaded straw heavily on the tyre cart and did not affix reflector on back side of the bullock cart. At the time of accident the bullocks ran helter-skelter and suddenly fell down therefore the petitioner and bullock sustained injuries. Therefore the petitioner is wholly responsible for the accident. The driver of the van is no way responsible for the accident. Further contended that the van is duly insured and the policy was in force and driver of the van was possessing valid driving license on the date of accident. The sum awarded under different heads are excessive and hence the petitioner is not entitled for any enhancement of compensation and prayed for dismissal of the appeal.

4.The Tribunal after analysing the evidence and documents and placed before the same. The accident has happened due to the rash driving of the 1st respondent's vehicle by its driver and that there is no contributory negligence on the part of the petitioner. While fixing the quantum the Tribunal observed the contentions raised by both side by way of evidence and documents and has given a finding that the accident occurred only due to the rash and negligent driving on the part of the driver of the van and also awarded a sum of Rs.4,00,000/- as compensation under the following heads:

Loss of income	Rs.1,62,000/-
Medical bills	Rs.2,09,188/-
Damages to tyre cart	Rs.19,950/-
Pain & suffering	Rs.5,000/-
Extra nourishment	Rs.5,000/-
Total	Rs.4,01,138/- is rounded off to Rs.4,00,000/-

Aggrieved against the said award the claimant has preferred this appeal for enhancement of compensation.

5. In the grounds of appeal, the appellant has contended that the quantum arrived by the Tribunal is very much on the meagre side inspite of the documents filed before the Tribunal towards transportation charges. The medical expenses also not properly considered by the Tribunal. The disability assessed by the Tribunal is also on the meagre side when the claimant is completely disabled due to the accident. The Tribunal has also failed to consider the future prospects of the injured person and failed to consider the principles laid down by the Hon'ble Apex Court. The Tribunal failed to allow compensation for the loss of earning during hospitalization and convalescent periods during which the claimant was stay put in bed several months. Hence the appellant sought for enhancement of compensation and setting aside the award made by the Tribunal.

6. Heard Mr.C.Jagadish, learned counsel appearing for the appellant and Mr.S.Arunkumar, learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

7. On perusal of the records, it is seen that the appellant/claimant sustained multiple injuries and also grievous injuries and that has been very much spoken by the appellant before the Tribunal. It is contended by the appellant before the Tribunal that the appellant has taken treatment as in-patient for 10 days. Ex.P2 to Ex.P5 discharge summaries and medical prescriptions of the claimant was issued by Sugam Multi Speciality Hospital at Kumbakonam. The said documents reveal the fact that he was under treatment from the day of accident till 29.03.2011. PW4 Dr.T.Kanmani was also examined before the Tribunal who has issued disability certificate, assessing the disability at 50%. It is seen from the records that the appellant/claimant was aged 55 years at the time of accident. The appellant/claimant was working as a agricultural coolie and was earning a sum of Rs.12,000/- per month. The Tribunal observed the said fact and fixed the notional income at Rs.3,000/- per month and the annual income shall be Rs.36,000/- and the loss of annual income shall be Rs.18,000/-. The Tribunal applied multiplier '9' and arrived loss of income Rs.1,62,000/- (Rs.18,000/- x 9) has been properly considered by the Tribunal. In view of the Ex.P11/copy of registration certificate for the vehicle bearing Reg.No.TN-31-AY-6282, Ex.P13/Bullock cart repairing bill and evidence of PW3, the sum awarded by the

Tribunal under the heads, medical expenses, damages to tyre cart, pain & suffering and extra nourishment is found proper and reasonable and does not require any modification. Further it is seen that the Tribunal has not awarded any amount towards transportation charges and Attendant charges hence this Court grants a sum of Rs.25,000/- and Rs.5,000/- respectively under those heads. 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)
1.	Loss of income	Rs.1,62,000/-	Rs.1,62,000/-
2.	Medical bills	Rs.2,09,188/-	Rs.2,09,188/-
3.	Damages to tyre cart	Rs.19,950/-	Rs.19,950/-
4.	Pain and suffering	Rs.5,000/-	Rs.5,000/-
5.	Extra nourishment	Rs.5,000/-	Rs.5,000/-
6.	Transportation charges	-	Rs.25,000/-
7.	Attendant charges	-	Rs.5,000/-
	Total	Rs.4,01,138/- is rounded off to Rs.4,00,000/-	Rs.4,31,138/- is rounded off to Rs.4,30,000/-

8.In the result, this Civil Miscellaneous Appeal is partly allowed. At this juncture, the learned counsel for the appellant submitted that the interest given by the Tribunal 6% per annum is very low and it has to be modified to 7.5% per annum. The compensation awarded by the Tribunal at Rs.4,00,000/- is hereby enhanced to Rs.4,30,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

9.The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd 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/claimant is permitted

to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Principal District Judge,
Motor Accidents Claims Tribunal,
Ariyalur.

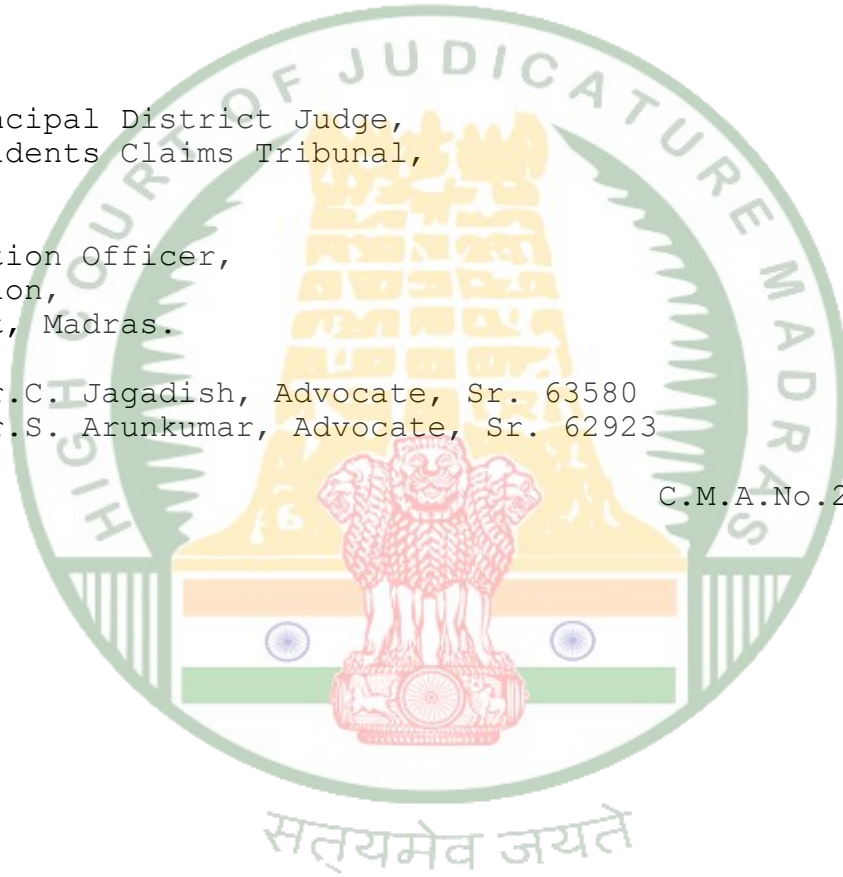
2.The Section Officer,
V.R. Section,
High Court, Madras.

1 cc to Mr.C. Jagadish, Advocate, Sr. 63580

1 cc to Mr.S. Arunkumar, Advocate, Sr. 62923

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