

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 1784 of 2016

Utham Mandal

.. Appellant/Petitioner

Vs.

1. N. Suresh

2. M/s. TSR Transports (P) Ltd.,
No. 213, Alagesan Road,
Saibaba Colony, Coimbatore.

3. United India Insurance Co. Ltd.,
Door No. 3, P.B. No. 1122, D.B. Road,
R.S. Puram,
Coimbatore 641 002.

4. John Vesli

5. The Managing Director,
Tamilnadu State Transport Corporation,
(Coimbatore Division), Chennimalai Road,
Erode.

.. Respondents/Respondents

(The claim petition as against 4th and 5th respondents was dismissed, hence they are given up and as far as the respondents 1 and 2, they remained exparte before the Tribunal. Hence, notice is dispensed with.)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 08.11.2012, made in M.C.O.P.No. 206 of 2011, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Bhavani, Erode District.

For Appellant : Mr. Ma.P. Thangavel

For Respondents: Ms. I. Malar (for R3)

Mr. K.J. Sivakumar (for R5)

RR1 & 2 Exparte

R4- Given up

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 08.11.2012, made in M.C.O.P.No. 206 of 2011, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Bhavani, Erode District.

2.The appellant is the claimant in M.C.O.P.No. 206 of 2011, on the file of the IV Additional District Court, (Motor Accident Claims Tribunal), Bhavani, Erode District. He filed the 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 15.09.2010.

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 dismissed the claim petition as against the respondents 4 and 5 and directed the 3rd respondent as insurer of the bus to pay a sum of Rs.5,08,486/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 08.11.2012, made in M.C.O.P.No. 206 of 2011, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended that at the time of accident, the appellant, aged 48 years, was working as a Supervisor in NH 47 Road work of IVRCL and was earning a sum of Rs.10,000/- per month and marked Ex.P16 to prove the same. However, the Tribunal fixed a meagre sum of Rs.4,500/- as monthly income. Due to the accident, his right hand was amputated upto shoulder and sustained blood injuries in the head and entire body. P.W.2-Doctor assessed the percentage of disability as 90%. The Tribunal, without assigning any reasons, reduced the percentage of disability to 60%. The Tribunal failed to award compensation towards artificial limb, future medical expenses, attendant charges, loss of marriage life and loss of amenities. In any event, the total compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that the Tribunal, in the absence of any working sheet to satisfy the percentage of disability assessed by P.W.2- Doctor as 90% disability, reduced the same to 60%. The same is not erroneous. In the absence of any material evidence to prove the income of the appellant, the

Tribunal rightly fixed the notional income at Rs.4,500/- per month and granted compensation towards disability, which is just and reasonable. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Learned counsel appearing for the 5th respondent submitted that as the claim petition is dismissed as against the 5th respondent, the 5th respondent is not a necessary party.

8.Heard learned counsel appearing for the appellant as well as the 3rd respondent and 5th respondent and perused the materials available on record.

9.It is the contention of the appellant that he was working as a Supervisor in NH 47 Road Work, IVRCL, and was earning a sum of Rs.10,000/- per month. He has marked his salary certificate as Ex.P16 and examined an Assistant Engineer of his employer as P.W.3. The Tribunal holding that no attendance register and salary registers were filed to prove the avocation of the appellant, fixed a meagre amount of Rs.4,500/- as the monthly income of the appellant. The accident is of the year 2010. Hence, the monthly income of the appellant is fixed at Rs.6,500/-. From the materials on record, it is seen that due to the accident, the appellant suffered amputation of the right hand and several other blood injuries all over the body. P.W.2 - Doctor has assessed the percentage of disability suffered by the appellant as 90%. The Tribunal, considering the fact that no working sheet has been filed to arrive at the percentage of disability, reduced the same to 60%. The said reason is not erroneous. The appellant was aged 50 years at the time of accident. Hence, applying the multiplier '13', the amount awarded by the Tribunal towards disability is modified to Rs.6,08,400/- {Rs.6,500/- x 12 x 13 x 60%}. For the injuries sustained in the accident, the appellant has taken treatment at Kovai Ganga Hospital as in-patient and marked discharge summary as Ex.P12 to substantiate the same. The Tribunal failed to grant any amount towards attendant charges and loss of amenities. Considering the nature of injuries and materials on record viz., disability certificate and X-rays marked as Exs.P14 & P15, this Court awards a sum of Rs.10,000/- each is awarded towards attendant charges and loss of amenities. The amounts awarded by the Tribunal towards extra nourishment and pain and suffering are meagre. Considering the fact that the appellant has suffered amputation, he is entitled to a sum of Rs.25,000/- each towards pain and suffering and extra nourishment. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, 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	4,21,200/-	6,08,400/-	Confirmed
2.	Pain and suffering	10,000/-	25,000/-	Enhanced
3.	Extra nourishment	10,000/-	25,000/-	Enhanced
4.	Transportation	2,000/-	2,000/-	Confirmed
5.	Medical expenses	65,286/-	65,286/-	Confirmed
6.	Attendant charges	-	10,000/-	Granted
7.	Loss of amenities	-	10,000/-	Granted
	Total	5,08,486/-	7,45,686/-	Enhanced by Rs.2,37,200/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.5,08,486/- is enhanced to Rs.7,45,686/- along with interest and costs. The 3rd respondent is 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. 206 of 2011. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.2,37,200/-, enhanced by this Court as per the order of this Court dated 11.08.2016, made in M.P. No. 2 of 2015 in C.M.A. SR. No. 58983 of 2015. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.2,37,200/-. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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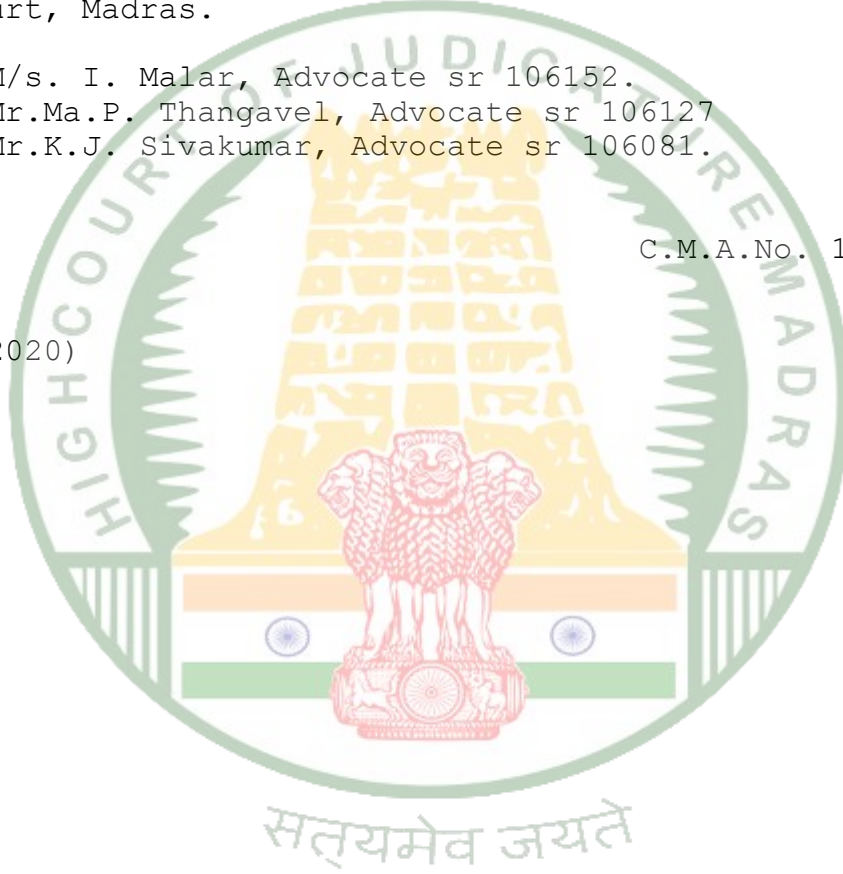
1.The IV Additional District Judge,
(Motor Accident Claims Tribunal),
Bhavani,
Erode District.

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

+1 CC to M/s. I. Malar, Advocate sr 106152.
+1 CC to Mr.Ma.P. Thangavel, Advocate sr 106127
+1 CC to Mr.K.J. Sivakumar, Advocate sr 106081.

C.M.A.No. 1784 of 2016

VGII (CO)
SP(25/08/2020)



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