

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.546 of 2015

Karthick

.. Appellant

Vs.

1.Kathirvel

2.The Oriental Insurance Co. Ltd.,

Kumar Complex 1st Floor,

146, West Car Street, Tiruchengode,

Namakkal District.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.07.2013 made in M.C.O.P.No.628 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari.

For Appellant : Ms.T.Gayathri for
Mr.C.Kulanthaivel

For R1 : No Appearance
For R2 : Mr.S.Arunkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 16.07.2013 made in M.C.O.P.No.628 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari.

2.The appellant is the claimant in M.C.O.P.No.628 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari. 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 06.06.2009.

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 lorry belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the lorry to pay a sum of Rs.85,000/- as compensation to the appellant/claimant.

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 was owner of saloon shop and was also doing decoration work and earning a sum of Rs.10,000/- per month. The Tribunal fixed meager sum of Rs.150/- per day and granted very meager sum of Rs.13,500/- as compensation towards loss of income. P.W.2/Doctor certified that appellant suffered 37% disability and issued Ex.P9/disability certificate and stated that appellant suffered fracture on the right thigh and his movement of hip and right knee joint is considerably restricted. The Tribunal reduced the percentage of disability as suffered by the appellant from 37% to 25% on the ground that P.W.2/Doctor is not the Doctor, who treated the appellant. The appellant has taken treatment in the hospital as in-patient for 25 days from 06.06.2009 to 30.06.2009 and the Tribunal has not granted any amount towards attendant charges, loss of amenities and loss of cloth. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

6. Per contra, Mr.S.Arunkumar, learned counsel appearing for the second respondent-Insurance Company contended that the appellant has not let in any evidence to prove that he was earning a sum of Rs.10,000/- per month. In the absence of any material to prove the income of the appellant, the Tribunal fixed a sum of Rs.150/- per day and granted compensation, which is proper. The Tribunal rightly reduced the percentage of disability from 37% to 25% on the ground that P.W.2/Doctor is not the Doctor, who treated the appellant. The amounts awarded by the Tribunal under different heads are not meager and prayed for dismissal of the appeal.

7. I have 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 on record, it is seen that P.W.2/Doctor certified that the appellant suffered 37% disability. The Tribunal reduced the percentage of disability as assessed by P.W.2/Doctor on the ground that P.W.2/Doctor is not the Doctor who treated the appellant and the same is not correct. The appellant is entitled to compensation for 37% disability at the rate of Rs.2,000/- per percentage. Hence, the compensation awarded by the Tribunal towards permanent disability is modified to Rs.74,000/- [Rs.2,000/- X 37]. The contention of the learned counsel for the appellant is that the appellant was owner of saloon shop and was also doing decoration work and was earning a sum of Rs.10,000/- per month. In the absence of any evidence to

prove the income of the appellant, the Tribunal fixed meager sum of Rs.150/- per day and granted compensation of Rs.13,500/- towards loss of income, which is not correct. The accident occurred in the year 2009 and a sum of Rs.6,500/- is fixed as monthly income and the appellant is entitled to compensation towards loss of income for six months. The compensation awarded by the Tribunal towards loss of income is modified to Rs.39,000/- [Rs.6,500/- X 6]. The appellant has taken treatment in the hospital as in-patient for 25 days from 06.06.2009 to 30.06.2009. The Tribunal has awarded meager sum of Rs.10,000/- towards transportation and extra nourishment and the same is hereby enhanced to Rs.30,000/-. The Tribunal has not granted any amount towards attendant charges. Therefore, a sum of Rs.10,000/- is granted by this Court towards attendant charges. Considering the nature of injuries and disability suffered by the appellant, a sum of Rs.10,000/- towards loss of amenities and Rs.1,000/- towards loss of cloth are granted by this Court. The amounts awarded by the Tribunal towards pain and suffering and medical expenses are hereby 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	37,500/-	74,000/-	enhanced
2.	Loss of income	13,500/-	39,000/-	enhanced
3.	Transportation and extra nourishment	10,000/-	30,000/-	enhanced
4.	Pain and suffering	20,000/-	20,000/-	confirmed
5.	Medical bills	4,000/-	4,000/-	confirmed
6.	Attendant charges	-	10,000/-	granted
7.	Loss of amenities	-	10,000/-	granted
8.	Loss of cloth	-	1,000/-	granted
	Total	Rs.85,000/-	Rs.1,88,000/-	enhanced by Rs.1,03,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.85,000/- is hereby enhanced to Rs.1,88,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of

compensation. 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.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

To

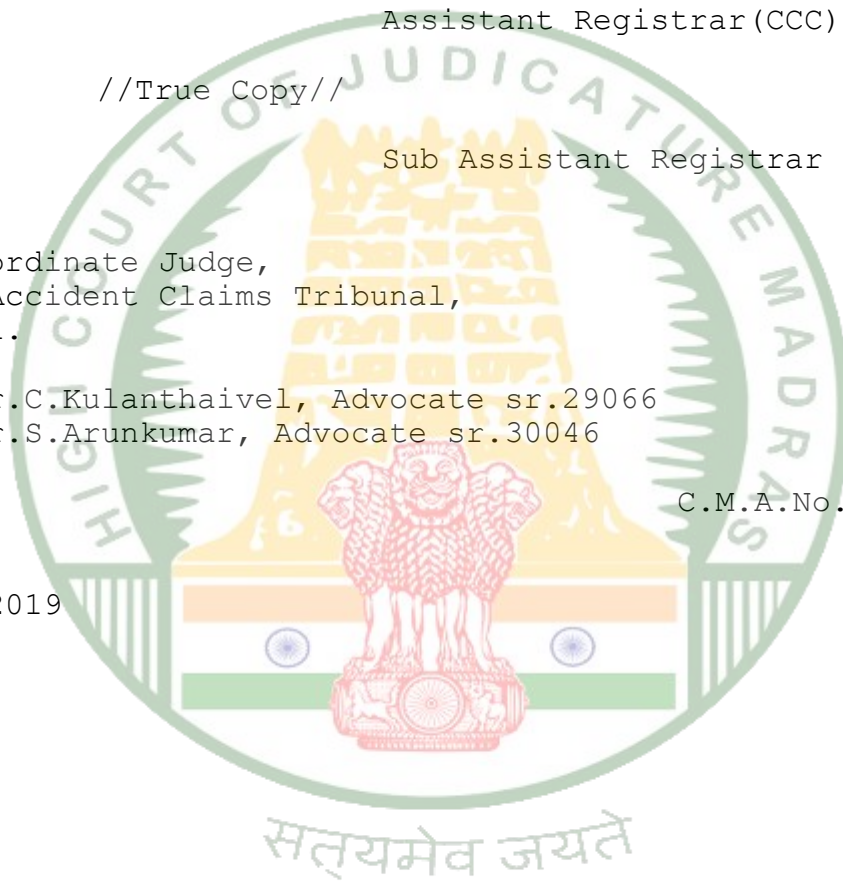
1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Sankari.

+1cc to Mr.C.Kulanthaivel, Advocate sr.29066

+1cc to Mr.S.Arunkumar, Advocate sr.30046

C.M.A.No.546 of 2015

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