

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 955 of 2015
and
C.M.P. No. 27105 of 2019

Velmurugan,
(Mentally ill health person
rep. By his next friend, guardian,
wife Krishnaveni) .. Appellant

Vs.

1.M. Vadivel

2.United India Insurance Co. Ltd.,
No. 10/18, Kuppanna Gounder Complex,
Erode Main Road,
Velayuthampalayam Road,
Karur District. .. Respondents

(1st respondent remained exparte before the
Tribunal. Hence notice not necessary.)

Prayer: This Civil Miscellaneous Appeal is filed under Section
173 of Motor Vehicles Act, 1988, against the award dated
16.11.2012, made in M.C.O.P.No. 17 of 2012, on the file of the
Additional District Court, (Motor Accident Claims Tribunal),
Namakkal.

For Appellant : Mr. Ma.P. Thangavel
For Respondents: Ms. I. Malar (for R2)

J U D G M E N T

This appeal has been filed seeking enhancement of the
compensation granted by the award dated 16.11.2012, made in
M.C.O.P.No. 17 of 2012, on the file of the District Court,
(Motor Accident Claims Tribunal), Namakkal.

2.The appellant is the claimant in M.C.O.P.No. 17 of 2012,
on the file of the District Court, (Motor Accident Claims
Tribunal), Namakkal. He filed the said claim petition, claiming
a sum of Rs.8,00,000/- as compensation for the injuries
sustained by him in the accident that took place on 19.09.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 1st respondent, rider-cum-owner of the Motor cycle and directed the 2nd respondent, as insurer of the vehicle, to pay a sum of Rs.7,65,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 16.11.2012, made in M.C.O.P.No. 17 of 2012, 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 was aged 35 years and was running Sri Muniyandi Vilas Hotel business and was earning a sum of Rs.15,000/- per month. Due to the accident, the appellant suffered blood clot in the right side of the brain and fracture in the right side skull and left leg femur and contusion of chest wall and back. He has also undergone surgery to fix rod in his leg and operated twice to remove blood clot in the brain. He was in coma stage for more than one month. P.W.3-Doctor assessed the permanent disability of the appellant as 70%. The Tribunal considering the evidence of P.W.3-Doctor, ought to have adopted the multiplier '16' in awarding compensation towards loss of income, including future prospects. The Tribunal has not awarded any amount towards future medical expenses. The amounts awarded by the Tribunal under other heads are meagre and prayed for enhancement of the compensation.

6.Per contra, learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal, considering the nature of injuries sustained by the appellant and disability suffered by the appellant, has awarded compensation towards injuries, loss of income and disability separately, apart from awarding compensation under other heads such as pain and suffering, medical expenses, loss of earning capacity, transportation charges and extra nourishment, which are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

8.It is the contention of the appellant that he was earning a sum of Rs.15,000/- per month by running a Hotel business. Due to the accident, he suffered blood clot in the right side of the brain and fracture in the right side skull and left leg femur and contusion of chest wall and back. P.W.3-Doctor has assessed the disability suffered by the appellant as 70%. The appellant

has marked the disability certificate issued by P.W.3-Doctor as Ex.P15. Considering the fact that the appellant has not filed any document to prove that he has closed the Hotel business and he is not running the same, the Tribunal rightly held that he is not entitled to compensation by applying multiplier method and awarded compensation of Rs.70,000/- separately towards disability and Rs.2,30,000/- towards loss of earning capacity. The Tribunal, without fixing the monthly income of the appellant, has awarded a sum of Rs.58,000/- towards loss of income, which is meagre. The accident is of the year 2011. In the absence of any material evidence to prove the avocation and income of the appellant, a sum of Rs.10,000/- per month is fixed as the notional income of the appellant. Considering the nature of injuries and disability, the appellant would not have attended his work atleast for a period of one year. Thus, he is entitled to a sum of Rs.1,20,000/- (Rs.10,000/- x 12 months) towards loss of income for a period of 12 months. The Tribunal has not awarded any amount towards attendant charges, future medical expenses, loss of clothes and loss of amenities. Considering the nature of injuries, Ex.P6 - discharge summary, Exs.P9 & P11 - X-rays and Exs.P12 & 13 - C.T Scans, a sum of Rs.40,000/- is awarded towards attendant charges, Rs.1,00,000/- towards future medical expenses, Rs.2,000/- towards loss of clothes and Rs.40,000/- towards loss of amenities. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are confirmed.

9.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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.	Injuries	12,000/-	12,000/-	confirmed
2.	Loss of income	58,000/-	1,20,000/-	Enhanced
3.	Transportation	5,000/-	5,000/-	Confirmed
4.	Extra nourishment	40,000/-	40,000/-	Confirmed

5.	Medical expenses	3,10,000/-	3,10,000/-	Confirmed
6.	Disability	70,000/-	70,000/-	confirmed
7.	Pain and suffering	40,000/-	40,000/-	Confirmed
8.	Loss of earning capacity	2,30,000/-	2,30,000/-	Confirmed
9.	Loss of clothes	-	2,000/-	Granted
10.	Loss of amenities	-	40,000/-	Granted
11.	Attendant charges	-	40,000/-	Granted
12.	Future medical expenses	-	1,00,000/-	Granted
	Total	7,65,000/-	10,09,000/-	Enhanced by Rs.2,44,000/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.7,65,000/- is enhanced to Rs.10,09,000/- along with interest and costs. The 2nd respondent is directed to deposit the enhanced award amount, now determined by this Court, 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. 17 of 2012. 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.2,44,000/-, enhanced by this Court as per the order of this Court dated 13.04.2015, made in M.P. No. 1 of 2015 in C.M.A. SR. No. 12148 of 2015. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CJ Conf)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Additional District Judge,
(Motor Accident Claims Tribunal),
Namakkal.

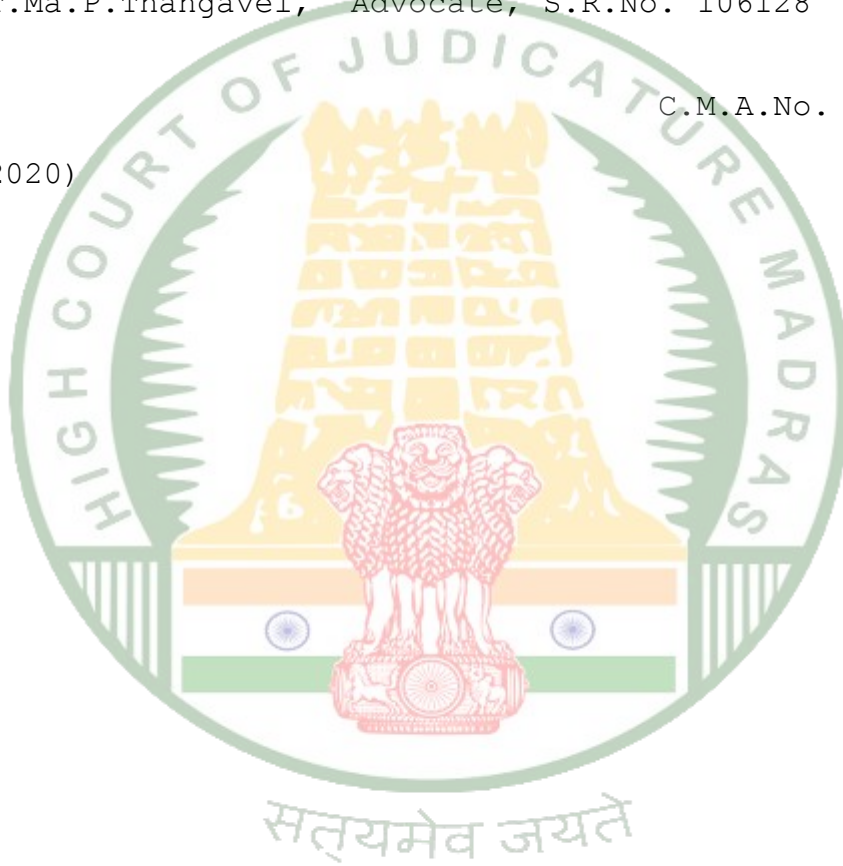
2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.Ravichandran, Advocate, S.R.No. 106151

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No. 106128

C.M.A.No. 955 of 2015

MG (CO)
GN (28/02/2020)



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