

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.898 of 2019

Thilageshwaran .. Appellant/Claimant
Vs.

- 1.The Managing Director,
Puducherry Road Transport Corporation,
No.4, Iyyanar Koil Street, Raja Nagar,
Puducherry.
- 2.The Chief Manager,
The Oriental Insurance Co. Ltd.,
(3rd party claims Hub),
No.216, Old No.115, Prakasam Salai,
Broadway, Chennai. .. Respondents/Respondents
(R1 was set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 23.10.2018, made in M.C.O.P.No.32 of 2016, on the file of the II Additional Sub Court, (Motor Accident Claims Tribunal), Cuddalore.

For Appellant : M/s.A.Divya Bharathi
for Mr.R.Sreedhar

For R2 : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant seeking enhancement of the compensation granted by the Tribunal in the award dated 23.10.2018, made in M.C.O.P.No.32 of 2016, on the file of the II Additional Sub Court, (Motor Accident Claims Tribunal), Cuddalore.

2.By consent of both the parties, the appeal is taken up for final disposal at the admission stage itself.

3.The appellant/claimant filed M.C.O.P.No.32 of 2016, on the file of the II Additional Sub Court, (Motor Accident Claims

Tribunal), Cuddalore, claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.11.2015. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.3,82,000/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 23.10.2018, made in M.C.O.P.No.32 of 2016, the appellant/claimant has come out with the present appeal.

5. The learned counsel appearing for the appellant/claimant contended that the appellant was a tailor and was earning a sum of Rs.15,000/- per month. The Tribunal erred in fixing a meagre sum of Rs.5,000/- as notional income of the appellant. The appellant suffered fracture and was taking treatment for 23 days for three different periods and amounts awarded by the Tribunal under different heads are very meagre and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant has not produced any material to prove the avocation and income of the appellant. In the absence of any materials with regard to avocation and income, the notional income fixed by the Tribunal is proper. The amounts awarded by the Tribunal under different heads are excessive and appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

8. From the materials on record, it is seen that the appellant has contended that he was a tailor and was earning a sum of Rs.15,000/- per month. The Tribunal in the absence of any document with regard to the income of the appellant, fixed a sum of Rs.5,000/- per month. The accident is of the year 2015. The amount fixed by the Tribunal as notional income is meagre and the same is enhanced to Rs.6,500/- per month. The appellant suffered fracture and the Medical Board has certified that he suffered 20% disability to the whole body. In view of the same, the Tribunal held that the appellant suffered functional disability and adopted multiplier method for awarding compensation. The appellant was aged 30 years at the time of accident and the multiplier applicable is '17'. The amounts

granted by the Tribunal towards loss of earning capacity is modified to Rs.2,65,200/- [Rs.6,500/- x 12 x 17 x 20%]. The amounts awarded by the Tribunal for loss of income is enhanced to Rs.32,500/- for a period of five months at the rate of Rs.6,500/- per month. The appellant has taken treatment as inpatient in the hospital for 23 days for three different periods. The Tribunal has awarded only a meagre sum of Rs.4,000/-. Hence, the same is enhanced to Rs.20,000/-. The amounts granted by the Tribunal under all other heads are just and reasonable and they 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.	Loss of earning capacity	2,04,000/-	2,65,200/-	enhanced
2.	Transportation	5,000/-	5,000/-	confirmed
3.	Special diet	10,000/-	10,000/-	confirmed
4.	Pain and suffering	20,000/-	20,000/-	confirmed
5.	Loss of amenities	10,000/-	10,000/-	confirmed
6.	Loss of income	15,000/-	32,500/-	enhanced
7.	Attender charges	4,000/-	20,000/-	enhanced
8.	Medical bills	1,14,000/-	1,14,000/-	confirmed
	Total	3,82,000/-	4,76,700/-	Enhanced by Rs.94,700/-

9. In the result, the appeal is partly allowed and award granted by the Tribunal at Rs.3,82,000/- is enhanced to Rs.4,76,700/- along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount 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, to the credit of

M.C.O.P.No.32 of 2016. On such deposit, the appellant/claimant is permitted to withdraw the award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsa

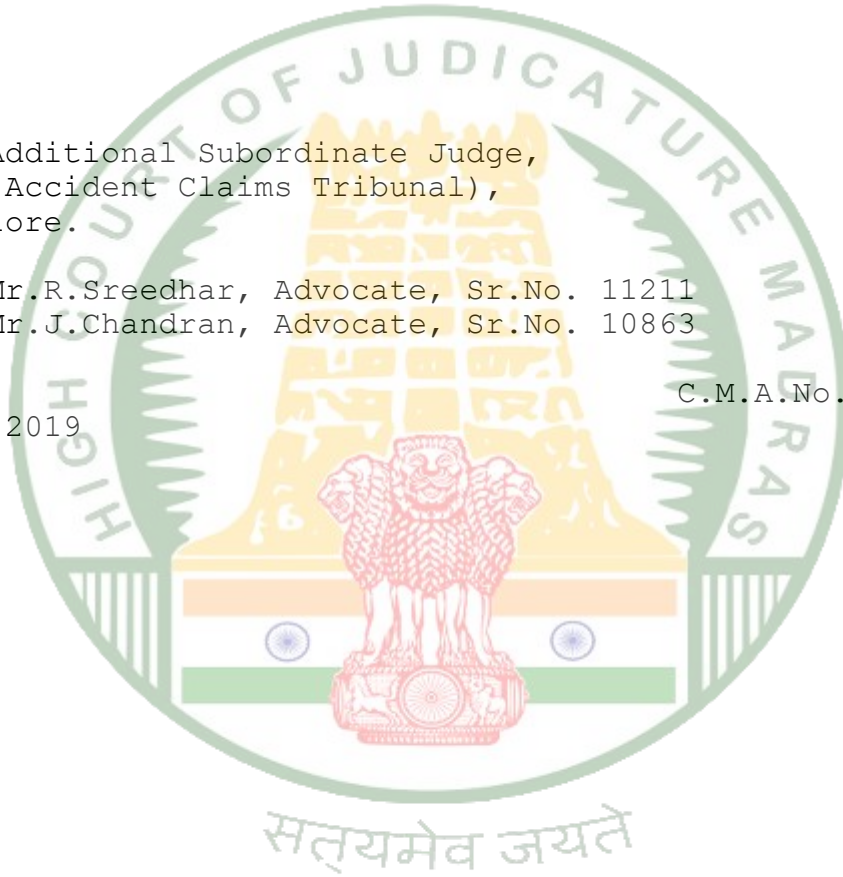
To

1.The II Additional Subordinate Judge,
(Motor Accident Claims Tribunal),
Cuddalore.

+1 cc to Mr.R.Sreedhar, Advocate, Sr.No. 11211
+1 cc to Mr.J.Chandran, Advocate, Sr.No. 10863

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CSL/14.06.2019



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