

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2356 of 2016

B.Mahendran

.. Appellant /Petitioner

Vs.

1.A.Raja

2.Oriental Insurance Company Ltd.,
having its Motor Third Party Hub office at
D.No.11, E.V.N.Road, Parimalam complex
II floor, Erode - 638 011.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 14.06.2016 made in M.C.O.P.No.580 of 2014 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For Appellant : Mr.D.Shivakumaran

For R1 : No appearance

For R2 : Mr.J.Chandran

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 14.06.2016 made in M.C.O.P.No.580 of 2014 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

2.The appellant is claimant in M.C.O.P.No.580 of 2014 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal. He filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 13.05.2014.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due

to rash and negligent driving by the driver of the lorry belonging to the 1st respondent and directed both the 1st respondent as well as the 2nd respondent/Insurance Company being insurer of the said lorry to jointly and severally pay a sum of Rs.2,50,000/- as compensation to the appellant.

4. Not being satisfied with the amounts 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/claimant contended that the appellant was working as power loom operator and was earning a sum of Rs.21,000/- per month. The appellant has examined P.W.4, his employer to prove the same. The Tribunal without considering the same, erred in fixing only a sum of Rs.6,500/- as monthly income of the appellant. In the accident, the appellant has sustained grievous injuries all over his body and fracture on his right shoulder and wrist. He could not do the work as he was doing earlier. The appellant has examined P.W.3/Doctor and produced all the necessary medical records to prove the same. P.W.3/Doctor has assessed the disability of the appellant at 59%. The Tribunal without considering the same, has reduced the same to 50%. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not produced any sufficient document to prove his income. Therefore, a sum of Rs.6,500/- fixed by the Tribunal as monthly income of the appellant is not meagre. Considering the cross-examination of P.W.3/Doctor, the Tribunal has rightly reduced the disability of the appellant from 59% to 50% holding that percentage of disability assessed by the doctor is on the higher side. The Tribunal after considering the materials available on record, has awarded just compensation. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Though notice was served on the 1st respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

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

9. It is seen that the appellant has contended that he was working as power loom operator and was earning a sum of Rs.21,000/- per month. He has examined P.W.4/employer, who has

deposed in his evidence that the appellant earned a sum of Rs.700/- per day and due to the injuries sustained by him in the accident, he did not come to work. But P.W.4 has not produced any document to prove that he is running power loom and employed the appellant as power loom operator on daily wage basis. In the absence of any evidence with regard to income of the appellant, the Tribunal fixed a sum of Rs.6,500/- as monthly income of the appellant, which is meagre. Considering the year of the accident and age of the appellant, a sum of Rs.13,000/- including future prospects is fixed as monthly income of the appellant. Considering the nature of injuries sustained by the appellant, he would not have attended the work atleast for six months. The appellant is entitled to a sum of Rs.78,000/- (Rs.13,000/- X 6) towards loss of income for a period of six months.

10. According to the appellant, he sustained grievous injuries all over his body and fracture on his right shoulder, wrist and head injury with fracture of skull with haemorrhagic contusion brain. He took treatment as in-patient in L.K.M.Hospital, Erode, from 13.05.2014 to 29.05.2014 and underwent surgery for his fracture. After discharging from hospital, he sustained septicemia in the place where he underwent surgery due to infection and then he took treatment as in-patient in Vivekananda Medical Care Hospital from 01.04.2015 to 04.04.2015 and again underwent surgery for removing the instruments fixed on his right hand. Due to the injuries, he could not do the work as he was doing earlier. P.W.3/Doctor in his evidence has deposed that the appellant could not do heavy work and assessed the disability of the appellant at 59%. The Tribunal has reduced the same to 50% on the ground that percentage of disability assessed by P.W.3/Doctor is on the higher side. The reason given by the Tribunal for reducing the percentage of disability is not correct. The appellant is entitled to compensation for 59% disability. The Tribunal has fixed a sum of Rs.2,000/- per percentage of disability, which is not proper. The accident is of the year 2014 and the appellant is entitled to a sum of Rs.3,000/- per percentage of disability. This Court awards a sum of Rs.1,77,000/- (Rs.3,000/- X 59%) towards disability. In addition to that, the Tribunal has awarded a sum of Rs.50,000/- altogether towards loss of earning power, pain & suffering, transportation, extra nourishment and loss of earning during treatment period, which is not proper and the same is hereby set aside. This Court awards a sum of Rs.30,000/- towards pain & suffering, Rs.15,000/- towards transportation and Rs.25,000/- towards extra nourishment. The Tribunal has not awarded any amount towards attendant charges, damage to clothes and loss of amenities. Considering the nature of injuries sustained by the appellant and period of treatment taken by him, this Court awards a sum of Rs.25,000/-, Rs.3,000/- and Rs.30,000/- towards attendant charges, damage to clothes and

loss of amenities respectively. A sum of Rs.1,00,000/- awarded by the Tribunal towards medical expenses is just and reasonable and the same is 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 or reduced
1.	Disability	1,00,000	1,77,000	Enhanced
2.	Loss of earning power, pain & suffering, transportation, extra nourishment and loss of earning during treatment period,	50,000	-	Set aside
3.	Pain and suffering	-	30,000	Granted
4.	Transportation	-	15,000	Granted
5.	Extra nourishment	-	25,000	Granted
6.	Attendant charges	-	25,000	Granted
7.	Damage to clothes	-	3,000	Granted
8.	Loss of amenities	-	30,000	Granted
9.	Medical bills	1,00,000	1,00,000	Confirmed
	Total	2,50,000	4,05,000	Enhanced by Rs.1,55,000 /-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,50,000/- is hereby enhanced to Rs.4,05,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. Both the 1st respondent as well as the 2nd respondent/Insurance Company are directed to deposit the enhanced award amount now determined by this Court along with interest and costs, jointly and severally, 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. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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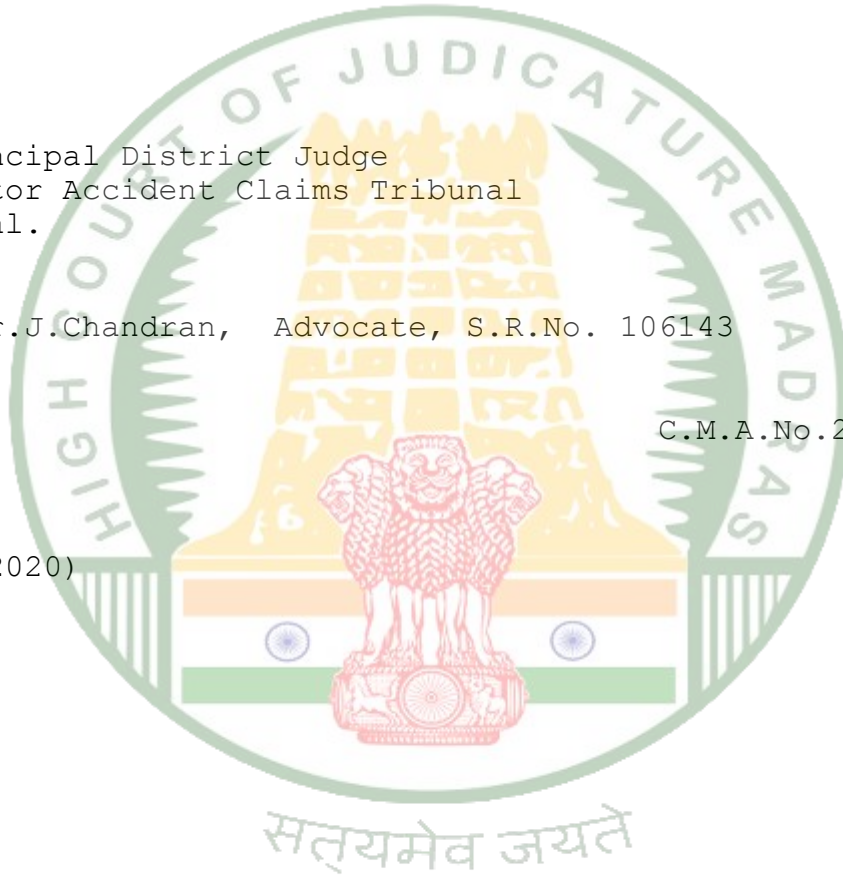
To

1.The Principal District Judge
The Motor Accident Claims Tribunal
Namakkal.

+1cc to Mr.J.Chandran, Advocate, S.R.No. 106143

C.M.A.No.2356 of 2016

LN(CO)
GN(17/12/2020)



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