

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.822 of 2016

Kulandaivel

.. Appellant/Petitioner

Vs.

1. D.Annadurai

2. The New India Assurance Company Limited,
12, New Hospital Road,
Gobi - 638 452,
Erode District.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.02.2016 made in M.C.O.P.No.119 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran
for Mr.C.Paraneedharan

For R2 : Mrs.R.Sreevidhya

For R1 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 05.02.2016 made in M.C.O.P.No.119 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode.

2.The appellant is the claimant in M.C.O.P.No.119 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode. He filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 18.06.2013.

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 car belonging to the first respondent and directed the respondents 1 and 2, being

the owner and insurer of the car to jointly and severally pay a sum of Rs.1,68,429/- 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 Tribunal reduced the permanent disability of the appellant from 55% to 30% without assigning any reason and granted meagre sum of Rs.60,000/- towards disability. The appellant has suffered functional disability and the Tribunal ought to have adopted multiplier method for granting compensation towards 55% disability. The appellant was an agricultural coolie and was earning a sum of Rs.15,000/- per month. The Tribunal has granted only a sum of Rs.13,500/- towards loss of income, which is meagre. The appellant has taken treatment in the hospital as in-patient from 18.06.2013 to 17.07.2013 and the Tribunal has not granted any amount towards attendant charges. The appellant suffered injury on his right leg and he is unable to do his daily works without the assistance. The Tribunal failed to award any amount towards loss of amenities. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, Mrs.R.Sreevidhya, learned counsel appearing for the second respondent-Insurance Company contended that the appellant is not entitled to compensation by applying multiplier method as he has not proved that he suffered functional disability. The Tribunal reduced the percentage of disability from 55% to 30% on the ground that P.W.2/Doctor did not treat the appellant and the percentage of disability assessed by P.W.2/Doctor is on higher side. The appellant contended that he was an agricultural coolie and was earning a sum of Rs.15,000/- per month. Except oral evidence, he has not produced any documents to prove the same. In the absence of any documents with regard to avocation and income, the Tribunal granted a sum of Rs.13,500/- as compensation towards loss of income, which is just and reasonable. The Tribunal has awarded a total sum of Rs.1,68,429/- as compensation to the appellant. In view of the excess compensation granted by the Tribunal, the appellant is not entitled to any amount towards attendant charges and loss of amenities. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

7. 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 available on record, it is seen that P.W.2/Doctor assessed percentage of disability suffered by the appellant at 55% and the Tribunal reduced the same to 30% on the ground that P.W.2/Doctor is not the Doctor who treated the appellant and the percentage of disability assessed by P.W.2/Doctor is on the higher side. The reason given by the Tribunal for reducing the percentage of disability is not correct. The Tribunal has granted a sum of Rs.60,000/- towards 30% disability at the rate of Rs.2,000/- per percentage. The accident occurred in the year 2013. The appellant is entitled to compensation for 55% disability at the rate of Rs.3,000/- per percentage of disability. The appellant has not proved that he suffered functional disability and therefore he is not entitled to compensation by adopting multiplier method. Thus, the compensation granted by the Tribunal towards disability is enhanced to Rs.1,65,000/- [Rs.3,000/- X 55]. The appellant contended that he was an agricultural coolie and was earning a sum of Rs.15,000/- per month. Except oral evidence, he has not produced any documents to prove the same. In the absence of any documents with regard to avocation and income, the Tribunal granted a sum of Rs.13,500/- as compensation towards loss of income. The appellant was aged 45 years at the time of accident. Considering the age and nature of work done by the appellant, a sum of Rs.7,500/- is fixed by this Court as notional income of the appellant per month. Due to the nature of injuries and disability suffered by the appellant, he would not have worked at least for a period of 6 months. Therefore, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.45,000/- [Rs.7,500/- X 6].

9. From the award passed by the Tribunal, it is seen that the appellant has taken treatment in the hospital as in-patient from 18.06.2013 to 17.07.2013 and the Tribunal has not granted any amount towards attendant charges and loss of amenities. Therefore, considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.20,000/- and Rs.25,000/- are granted by this Court towards attendant charges and loss of amenities respectively. The Tribunal has awarded a meagre sum of Rs.3,000/- towards transportation and the same is enhanced to Rs.10,000/-. The Tribunal has awarded a sum of Rs.5,000/- towards extra nourishment and Rs.10,000/- towards pain and sufferings, which are meagre and the same are hereby enhanced to Rs.25,000/- each. The amount awarded by the Tribunal towards medical expenses is just and reasonable and hence the same is 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 income	13,500/-	45,000/-	Enhanced
2.	Disability	60,000/-	1,65,000/-	Enhanced
3.	Extra nourishment	5,000/-	25,000/-	Enhanced
4.	Transportation	3,000/-	10,000/-	Enhanced
5.	Pain and sufferings	10,000/-	25,000/-	Enhanced
6.	Medical expenses	76,929/-	76,929/-	Confirmed
7.	Attendant charges	-	20,000/-	Granted
8.	Loss of amenities	-	25,000/-	Granted
	Total	Rs.1,68,429/-	Rs.3,91,929/-	enhanced by Rs.2,23,500/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,68,429/- is hereby enhanced to Rs.3,91,929/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 and 2 are jointly and severally 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, to the credit of M.C.O.P.No.119 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode. 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.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

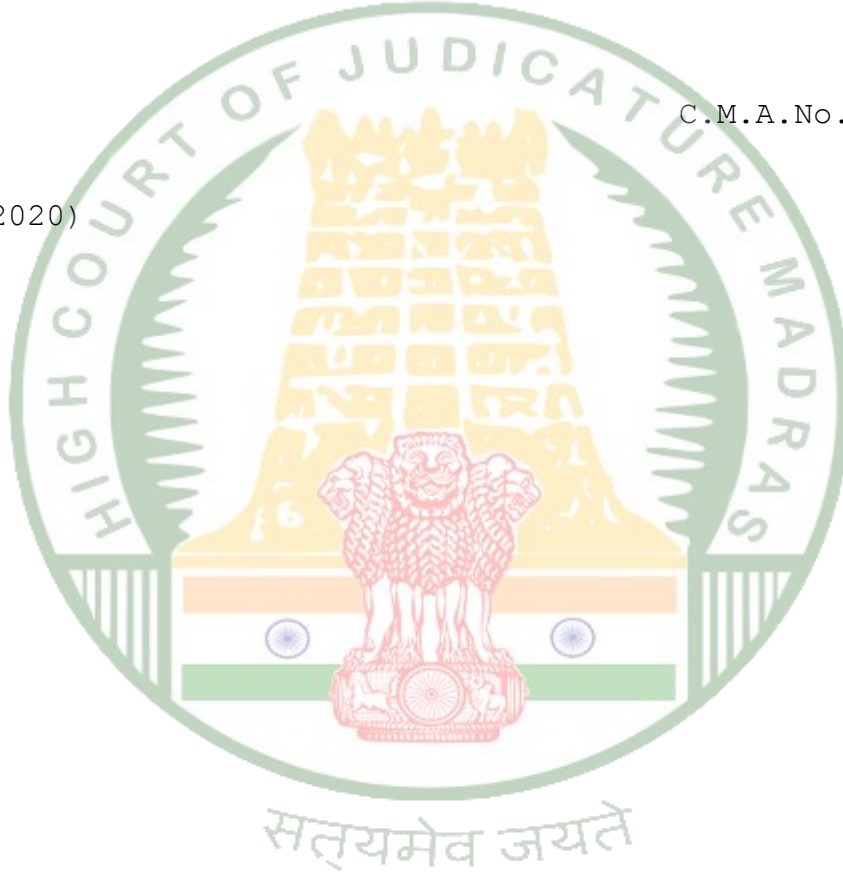
1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruchengode.

2. The Section Officer,
VR Section,
High Court,
Madras.

+1 CC to Mrs.R.Sreevidhya, Advocate sr 105682.

C.M.A.No.822 of 2016

MR(CO)
SP(21/08/2020)



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