

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2948 of 2019

Balamurugan

.. Appellant

Vs.

1.Sivakumar

2.The National Insurance Co., Ltd.,
Second Floor, 81-D, North Car Street,
Tiruchengode Town & Taluk,
Namakkal District.
Branch Office: 73, Perundurai Road,
Near Collector Office,
Post Box No.911, Erode - 638 011.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.10.2018 made in M.C.O.P.No.421 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Erode.

For Appellant : Mr.T.S.Arthanareeswaran

For R1 : Exparte

For R2 : Mr.J.Chandran

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 23.10.2018 made in M.C.O.P.No.421 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Erode. Aggrieved against the award of the Tribunal Rs.8,55,300/- as compensation against the claim of Rs.10,00,000/-.

2.The appellant is claimant in M.C.O.P.No.421 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Erode. He filed the 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 15.05.2016. 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 lorry belonging to the 1st respondent as well as negligent act on the part of the appellant, fixed 50% contributory negligence on the part of both the appellant as well as 1st respondent, awarded a sum of Rs.17,10,500/- as compensation and directed the 2nd respondent/Insurance Company to pay 50% of the award amount i.e., a sum of Rs.8,55,250/- is rounded off to Rs.8,55,300/- as compensation to the appellant. Not being satisfied with the above amount awarded by the Tribunal and fixing 50% contributory negligence on the part of the appellant, the appellant has come out with the present appeal seeking enhancement of compensation and setting aside 50% contributory negligence.

3.The learned counsel appearing for the appellant contended that the amount awarded by the Tribunal is very meagre. The appellant was working as a lorry body building worker and he was earning a sum of Rs.15,000/- per month. Due to the said accident, the appellant sustained grievous injuries and multiple fractures (Left eye nerve injury, severe head injury, left side ribs fracture, fracture left frontal bone maxilla, orbit and SDH left frontal region). The appellant has taken treatment as an in-patient from 19.05.2016 to 29.05.2016 nearly 10 days. During the treatment period, he underwent surgery plate and screws were fixed. Due to the said injuries, the appellant could not do his work as he was doing earlier and he lost his entire earning power. The Medical Board examined the appellant and has given disability certificate and the same was marked as Ex.C1. The disability certificate was signed by four Doctors including Senior Civil Ophthalmic surgeon. Ex.P6/charge sheet and Ex.P7/rough sketch clearly shows that the accident occurred only due to rash and negligent act of the lorry driver. But the Tribunal wrongly fixed 50% contributory negligence on the appellant, which is against the established principles and rulings of the Hon'ble High Court and Hon'ble Supreme Court. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

4.Per contra, learned counsel appearing for the 2nd respondent/Insurance Company contended that various Doctors assessed that the appellant has suffered 60% disability and the Tribunal reduced percentage of disability to 40% on the ground that disability assessed by the Doctor may vary from one Doctor to another, granted Rs.15,19,400/- towards disability and loss of earning power. The Tribunal has awarded a sum of Rs.75,000/- towards pain and sufferings. The accident is of the year 2016.

The amounts awarded by the Tribunal under different heads are excessive. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

5. Heard Mr.T.S.Arthanareeswaran, learned counsel appearing for the appellant and Mr.J.Chandran, learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

6. From the materials available on record, it is seen that the appellant has examined P.W.3 - Doctor and also examined himself as P.W.1 to prove the nature of injuries and disability. P.W.3 - Doctor and other Doctors have deposed that appellant suffered 60% disability and admitted that the disability assessed by them may be reduced by 40%. The Tribunal has taken monthly income of the appellant at Rs.13,300/- including 40% future prospects and 40% disability. The accident is of the year 2016. The appellant was aged 28 years at the time of accident. The multiplier '17' applied by the Tribunal is correct. The Tribunal has awarded a sum of Rs.15,19,400/- (Rs.13,300/- + Rs.5,320/- (Rs.13,300/- of 40%) x 12 x 17 x 40% = Rs.15,19,392/-) is rounded to Rs.15,19,400/-) towards disability and loss of earning power and the said amount is excessive. In addition, the Tribunal has awarded a sum of Rs.13,300/- towards loss of income, which is excessive. In view of the same, the appellant is not entitled for any enhancement of compensation.

7. In the result, the Civil Miscellaneous Appeal is dismissed. The compensation awarded by the Tribunal at Rs.17,10,500/- is hereby confirmed. The portion of the award fixing 50% contributory negligence on the part of the appellant is also confirmed. The appellant/claimant is entitled to 50% of the award amount i.e. Rs.8,55,250/- is rounded off to Rs.8,55,300/- as compensation. The 2nd respondent/Insurance Company is directed to deposit the award amount as stated supra, along with interest at the rate of 7.5% per annum and costs, less the amount already deposited, if any, within a period six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.421 of 2017. On such deposit, the appellant/claimant is permitted to withdraw the entire award amount, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

mtl

To

1.The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Erode.

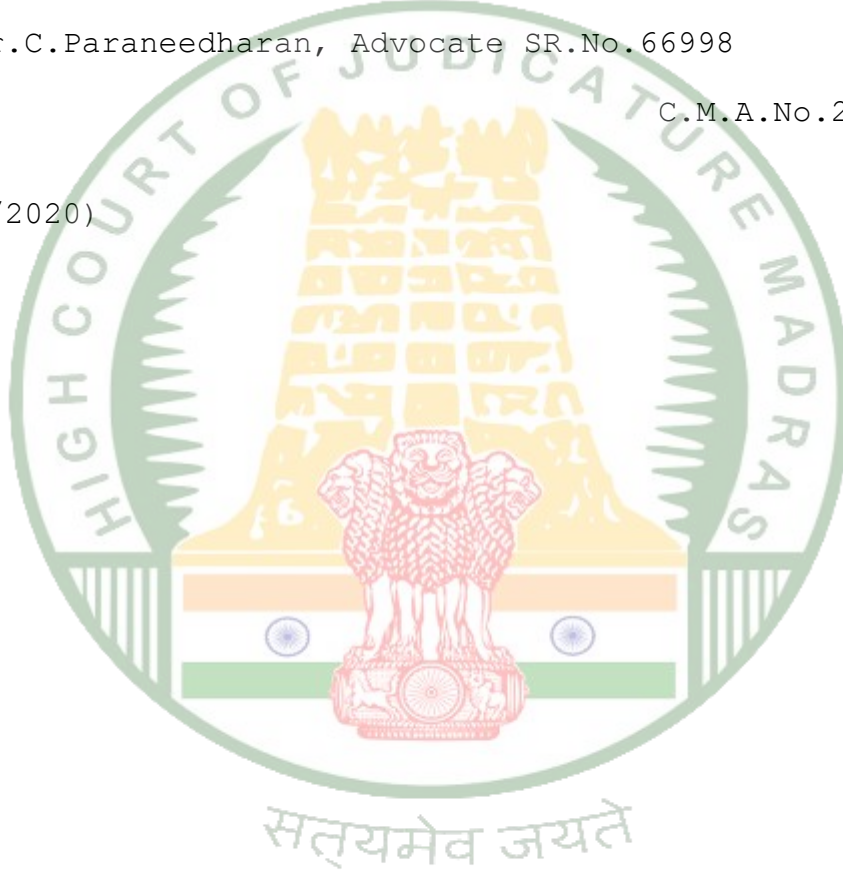
2.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.J.Chandran, Advocate SR.No.67673

+2cc to Mr.C.Paraneedharan, Advocate SR.No.66998

C.M.A.No.2948 of 2019

SS(CO)
GMY(22/07/2020)



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