

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.891 of 2018

M.Dinesh

..Appellant/Petitioner

Vs.

1. A.Vivek

2. The Manager,

United India Insurance Company Limited,
Branch Office, No.146-N, Kumar Complex,
Anna Salai, Tiruchengode,
Namakkal - 637 211.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.04.2015 made in M.C.O.P.No.939 of 2013 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

For Appellant

: Mr.A.R.Suresh

For R2

: Mr.T.Ravichandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 28.04.2015 made in M.C.O.P.No.939 of 2013 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

2.The appellant is the claimant in M.C.O.P.No.939 of 2013 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal. He filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.07.2013.

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 first respondent and directed the first respondent to pay a sum of Rs.1,91,500/- as compensation to the appellant.

4.Challenging the portion of the award directing the first respondent to pay the compensation and for enhancement of compensation, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the Tribunal erred in directing the first respondent to pay the compensation when the insurance policy issued by the second respondent-Insurance Company was in force at the time of accident. The Tribunal erred in awarding compensation at the rate of Rs.2,000/- per percentage instead of Rs.3,000/- per percentage, as the accident occurred in the year 2013. The Tribunal failed to consider that appellant was a IV year B.E. Mechanical Engineering student and due to the nature of injuries sustained by him, his earning capacity has been reduced and the Tribunal ought to have awarded compensation for loss of earning capacity. The appellant has taken treatment in the hospital as in-patient from 27.07.2013 to 07.08.2013 and the amount awarded by the Tribunal towards transportation, pain and sufferings, extra nourishment, attendant charges and loss of amenities are meager and prayed for setting aside the portion of the award directing the first respondent to pay the compensation and for enhancement of compensation directing the second respondent-Insurance Company to pay the compensation.

6.Per contra, Mr.T.Ravichandran, learned counsel appearing for the second respondent-Insurance Company contended that the appellant was a student and non-earning member. The Tribunal has rightly fixed a sum of Rs.15,000/- as annual income of the appellant. The first respondent has not produced valid driving license to drive the vehicle. In view of the same, the Tribunal rightly directed the first respondent to pay the compensation and amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

7.I have heard the learned counsel appearing for the appellant as well as the second respondent-Insurance Company and perused the entire materials on record.

8.From the materials available on record, it is seen that the appellant contended that he is a IV year B.E. Mechanical Engineering student. In the accident, he sustained grievous injuries and fracture. The second finger in the right leg was cut in the accident and due to the injuries, he was not able to do his work by using his right hand and right leg and lost earning capacity. The Tribunal accepting the evidence of P.W.2/Doctor and disability certificate, awarded compensation 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 at the rate of Rs.3,000/- per percentage towards 30% disability. The amount awarded by the

Tribunal towards disability is modified to Rs.90,000/- [Rs.3,000/- X 30]. The Tribunal has awarded a sum of Rs.5,000/- towards transportation, which is meagre and the same is hereby enhanced to Rs.10,000/-. Due to the injuries and disability, the appellant would have experienced severe pain. Hence, a sum of Rs.25,000/- granted by the Tribunal towards pain and sufferings is hereby enhanced to Rs.50,000/-. A meagre sum of Rs.5,000/- awarded by the Tribunal towards extra nourishment is hereby enhanced to Rs.20,000/-. The appellant has taken treatment in the hospital as in-patient from 27.07.2013 to 07.08.2013 and the Tribunal has awarded a sum of Rs.10,000/- towards attendant charges and a sum of Rs.25,000/- towards loss of amenities, which are meagre and the same are hereby enhanced to Rs.20,000/- and Rs.50,000/- respectively. The Tribunal has not awarded any amount towards loss of cloth, loss of income and for diminishing marital prospects. The appellant was IV year B.E. Mechanical Engineering student and after completion of his studies, the prospects of getting good job with decent salary would be reduced and due to disability suffered by him, the appellant is entitled to compensation for future loss of income for 12 months. The monthly income of the appellant is fixed at Rs.10,000/- per month. The appellant is entitled to a sum of Rs.1,20,000/- [Rs.10,000/- X 12] towards loss of income. The second finger in the right leg was cut and due to the same his marital prospects will be diminished. The appellant is entitled to a sum of Rs.1,00,000/- for diminishing marital prospects. A sum of Rs.2,000/- is granted by this Court towards loss of cloth. The compensation granted by the Tribunal towards medical expenses is confirmed. 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.	Disability	60,000/-	90,000/-	enhanced
2.	Medical expenses	61,512/-	61,512/-	confirmed
3.	Transportation	5,000/-	10,000/-	enhanced
4.	Pain and sufferings	25,000/-	50,000/-	enhanced
5.	Extra nourishment	5,000/-	20,000/-	enhanced
6.	Attendant charges	10,000/-	20,000/-	enhanced
7.	Loss of amenities	25,000/-	50,000/-	enhanced
8.	Loss of income	-	1,20,000/-	granted
9.	Marital prospects	-	1,00,000/-	granted

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
10	Loss of cloth	-	2,000/-	Granted
	Total	Rs.1,91,512/- rounded off to Rs.1,91,500/-	Rs.5,23,512/- rounded off to Rs.5,23,500/-	enhanced by Rs.3,32,000/-

9.The Tribunal has directed the first respondent to pay the compensation on the ground that the first respondent possessed only light motor vehicle license and drove the heavy goods vehicle. The said reasoning is erroneous. It is well settled that even if the driver of the offending vehicle did not possess driving license, the Insurance Company cannot be totally exonerated. In such circumstances, pay and recovery has to be ordered. Courts have power to award more compensation than what is claimed by the appellant, if circumstances so required. Hence, the second respondent-Insurance Company is directed to pay the compensation at the first instance and recover the same from the first respondent.

10.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,91,500/- is hereby enhanced to Rs.5,23,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court at the first instance and recover the same from the first respondent, together 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. 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. The appellant is directed to pay the Court fee, if any for the enhanced award amount now determined by this Court. The appellant is not entitled to any interest for the delay period on the amount of Rs.3,32,000/- now enhanced by this Court. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

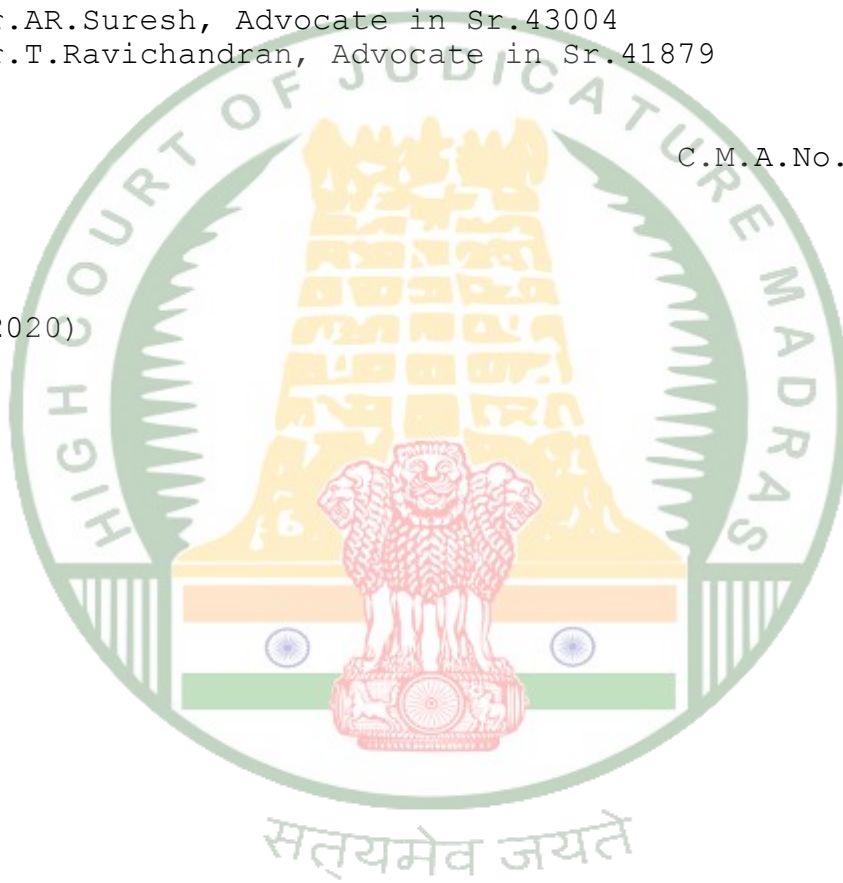
2. The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.AR.Suresh, Advocate in Sr.43004

+1cc to Mr.T.Ravichandran, Advocate in Sr.41879

C.M.A.No.891 of 2018

LN (CO)
RV (20/11/2020)



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