

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.934 of 2018

Manikandan

.. Appellant/Claimant

Vs.

1.Mahendran

2.United India Insurance Co. Ltd.,
Branch Office, Pallivasal Street,
Perambalur.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 21.10.2016, made in M.C.O.P.No.758 of 2015, on the file of the Sub Court, (Motor Accident Claims Tribunal), Perambalur.

For Appellant : Mr.R.Prabhu
for Mr.V.Raghupathi

For R1 : No appearance

For R2 : Mr.T.Ravichandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the award dated 21.10.2016, made in M.C.O.P.No.758 of 2015, on the file of the Sub Court, (Motor Accident Claims Tribunal), Perambalur.

2.The appellant/claimant filed M.C.O.P.No.758 of 2015, on the file of the Sub Court, (Motor Accident Claims Tribunal), Perambalur, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 25.08.2014.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the appellant/driver of the lorry bearing Registration No.TN-57-L-6363 belonging to the 1st respondent as well as the driver of another lorry bearing Registration No.TN-51-U-5646 and fixed 50% contributory

negligence on both of them. The Tribunal awarded a sum of Rs.10,63,898/- as compensation and directed the 2nd respondent-Insurance Company to pay a sum of Rs.5,31,949/- (50% of the award) as compensation to the appellant.

4.Challenging the portion of the award fixing 50% negligence on the part of the appellant and not being satisfied with the amounts granted by the Tribunal in the award dated 21.10.2016 made in M.C.O.P.No.758 of 2015, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the Tribunal erred in fixing meagre sum of Rs.6,750/- as the notional income of the appellant. The appellant was a heavy vehicle driver. The Tribunal ought to have fixed a sum of Rs.10,000/- per month. The Tribunal ought to have awarded compensation for 65% disability instead of 63%. The Tribunal ought to have awarded compensation for disability and loss of amenities separately and granted more compensation. The Tribunal ought not to have deduced 50% compensation on the ground of contributory negligence and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering all the materials on record in proper perspective, fixed 50% contributory negligence on the part of the appellant, which is not erroneous. The appellant failed to prove his avocation and income. In the absence of material evidence, the Tribunal fixed the notional monthly income at Rs.6,750/- which is proper and awarded compensation by applying the multiplier method. The total compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

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

8.From the materials on record, it is seen that the appellant has contended that while he was driving the lorry bearing Registration No.TN-57-L-6363 belonging to the 1st respondent, the driver of the lorry bearing Registration No.TN-51-U-5646 driven in a rash and negligent manner which was going in front of his lorry suddenly stopped without any signal. The appellant turned his lorry to the left hand side to avoid the accident. The lorry brushed aside the other lorry. Due to the collusion between two vehicles, the appellant sustained multiple injuries and the respondents are liable to pay compensation. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and

negligent driving by both the driver of the lorries. There is no error in the said finding. The appellant could have avoided the accident had he been cautious while driving his lorry behind another lorry. For that reason, the finding of the Tribunal that the appellant and driver of other lorry bearing Registration No.TN-U-5646 are responsible for the accident is confirmed. The appellant has not impleaded the driver, owner and insurer of the other lorry bearing Registration No.TN-U-5646. In view of the same, 50% contributory negligence fixed on the appellant is valid.

9.As far as the quantum of compensation is concerned, the appellant was a driver of heavy vehicle. He contended that he was earning a sum of Rs.20,000/- per month, but failed to prove the same. The accident is of the year 2014. A sum of Rs.6,750/- fixed by the Tribunal as monthly income is meagre and the same is fixed at Rs.9,000/-. The appellant was 26 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The appellant is entitled to 40% enhancement towards future prospects. P.W.2-Doctor assessed that the appellant suffered 65% disability and reduced the same to 63% on the ground that the disability assessed by P.W.2-Doctor can be reduced by taking physiotherapy treatment. The said reason is not correct. The appellant is entitled to compensation for 65% disability. Hence, the compensation granted towards disability is modified to Rs.16,70,760/- $\{[Rs.9,000/- + Rs.3,600/- (Rs.9,000/- \times 40\%) \times 12 \times 17 \times 65\%]\}$. The appellant has taken treatment as in-patient in hospital from 28.05.2014 to 02.09.2014. The Tribunal has granted meagre amount towards extra nourishment and attender charges. The same are enhanced to Rs.10,000/- each. The Tribunal failed to grant any amount towards loss of amenities. Hence, a sum of Rs.50,000/- is granted towards loss of amenities. Considering the nature of injuries and the period of treatment, the appellant would have suffered loss of income for atleast six months. Hence, the amount granted by the Tribunal towards loss of income is modified to Rs.50,000/-. The amounts granted by the Tribunal under other heads are just and reasonable and hence, 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 income	24,000/-	50,000/-	enhanced
2.	Disability	8,67,510/-	16,70,760/-	Enhanced

3.	Transportation	10,000/-	10,000/-	Confirmed
4.	Medical expenses	1,17,388/-	1,17,388/-	Confirmed
5.	Attendant charges	5,000/-	10,000/-	enhanced
6.	Pain and suffering	25,000/-	25,000/-	Confirmed
7.	Extra nourishment	5,000/-	10,000/-	Enhanced
8.	Future medical expenses	10,000/-	10,000/-	confirmed
9.	Loss of amenities	-	50,000/-	granted
	Total	10,63,898/-	19,53,148/-	
	50% of the compensation	5,31,949/-	9,76,574/-	Enhanced by Rs.4,44,625/-

9. In the result, the appeal is partly allowed and compensation granted by the Tribunal at Rs.10,63,898/- is enhanced to Rs.19,53,148/- along with interest and costs. The 2nd respondent is directed to deposit 50% of the award amount now granted, along with proportionate 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.758 of 2015. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary applications before the Tribunal. No costs. The appellant is directed to pay the necessary Court fee, if any for the amount now enhanced by this Court.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

Gsa

To

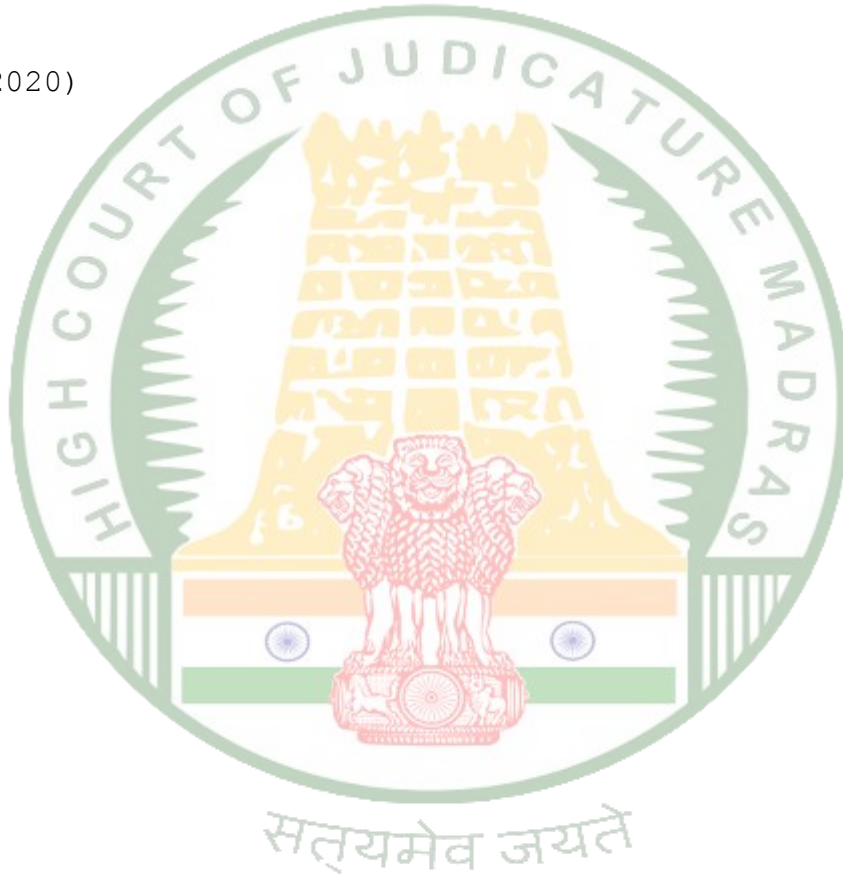
1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Perambalur.

+1cc to Mr.V.Raghupathi, Advocate, S.R.No. 42612

+1cc to Mr.I.Malar, Advocate, S.R.No. 41878

C.M.A.No.934 of 2018

PPA (CO)
GN(26/06/2020)



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