

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3362 of 2019

Ramasami

.. Appellant/ Petitioner

Vs.

1.Shanmugam

2.The United India Insurance Company Limited,
Divisional Office, Hub, Ranga Building,
Perumanur Main Road, Perumanur,
Salem - 636 007. .. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.02.2019 made in M.C.O.P.No.973 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem.

For Appellant : Mr.T.S.Arthanareeswaran
For R2 : Mr.C.Paranthaman
For 1st respondent : Ex-parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 27.02.2019 made in M.C.O.P.No.973 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem.

2. The appellant is the claimant in M.C.O.P.No.973 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem. 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 15.03.2017.

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 lorry belonging to the first respondent and fixed 15% negligence on the part of

the appellant for not wearing helmet at the time of accident and 85% negligence on the part of the driver of the lorry and directed the second respondent-Insurance Company to pay a sum of Rs.1,82,778/- towards 85% of the total compensation to the appellant.

4. Challenging the portion of the award fixing 15% contributory negligence on the part of the appellant and not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that the accident occurred entirely due to rash and negligent driving by the driver of the first respondent and the Tribunal erred in fixing 15% contributory negligence on the part of the appellant. Due to the injuries and disability suffered by the appellant, he could not do any work as he was doing earlier. The appellant was aged 72 years and the Tribunal ought to have adopted multiplier method and granted compensation towards loss of earning capacity. The appellant was working as Watchman and was earning a sum of Rs.12,000/- per month. Therefore, a sum of Rs.6,500/- fixed by the Tribunal as notional monthly income of the appellant is meager. The amounts awarded by the Tribunal under different heads are meager and prayed for setting aside 15% contributory negligence fixed on the part of the appellant and for enhancement of compensation.

6. Per contra, Mr.C.Paranthaman, learned counsel appearing for the second respondent - Insurance Company contended that the appellant was driving his TVS Champ motorcycle without wearing helmet and as per settled law, the Tribunal fixed 15% contributory negligence on the part of the appellant, which is valid. The appellant has not substantiated his claim that he was working as watchman and was earning a sum of Rs.12,000/- per month. In the absence of any material evidence to prove the avocation and income of the appellant, the notional monthly income fixed by the Tribunal at Rs.6,500/- is not meager. The total compensation 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 the Tribunal considering the fact that the appellant was not wearing helmet at the time of accident has fixed 15% contributory negligence on the part of the appellant. This is inconsonance with the judgments rendered by this Court in a

number of cases. There is no error in the said finding of the Tribunal warranting interference by this Court.

9. As far as quantum of compensation is concerned, the appellant has contended that he was working as Watchman and was earning a sum of Rs.12,000/- per month. Except oral evidence, the appellant has not produced any material evidence to substantiate his claim. The accident took place in the year 2017 and the notional income of Rs.6,500/- per month fixed by the Tribunal is meager. Therefore, the monthly income of the appellant is fixed at Rs.10,000/-. The Tribunal has granted a sum of Rs.32,500/- towards loss of income for six months. Considering the age, nature of injuries and disability, the appellant would not have worked atleast for a period of nine months. In view of the nature of work done by him as watchman, the compensation awarded by the Tribunal towards loss of income is hereby enhanced to Rs.90,000/- (Rs.10,000/- X 9 months). The disability certificate of the appellant issued by the Medical Board was marked as C.W.1 which shows that the appellant suffered 20% disability. The appellant has not proved that he suffered functional disability. Hence, he is not entitled to compensation by applying multiplier method. The Tribunal has granted compensation by awarding a sum of Rs.3,000/- per percentage which is not meager. The appellant has taken treatment in the hospital as in-patient on two occasions totalling 13 days, for which the Tribunal has awarded a sum of Rs.10,000/- towards attendant charges, which is meagre and the same is hereby enhanced to Rs.20,000/-. A sum of Rs.10,000/- awarded by the Tribunal towards extra nourishment is meagre and the same is hereby enhanced to Rs.25,000/-. The Tribunal has granted a sum of Rs.1,750/- towards damage to cloth, which is meager and the same is hereby enhanced to Rs.2,000/-. A meager amount of Rs.5,000/- granted by the Tribunal towards loss of amenities is hereby enhanced to Rs.20,000/-. The Tribunal has awarded a sum of Rs.22,000/- towards pain and sufferings and due to the age, the appellant would have suffered more pain. Therefore the compensation awarded by the Tribunal towards pain and sufferings is hereby enhanced to Rs.30,000/-. The amount awarded by the Tribunal under other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	60,000/-	60,000/-	confirmed
2.	Pain and suffering	22,000/-	30,000/-	enhanced

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
3.	Attendant charges	10,000/-	20,000/-	enhanced
4.	Extra nourishment	10,000/-	25,000/-	enhanced
5.	Medical expenses	63,782/-	63,782/-	confirmed
6.	Transportation	10,000/-	10,000/-	confirmed
7.	Loss of income	32,500/-	90,000/-	enhanced
8.	Loss of amenities	5,000/-	20,000/-	enhanced
9.	Damage to cloth	1,750/-	2,000/-	enhanced
	Total	Rs.2,15,032/-	Rs.3,20,782/-	
	85% of compensation	Rs.1,82,778/-	Rs.2,72,664.7 rounded off to Rs.2,72,665/-	enhanced by Rs.89,887/-

15% of negligence fixed by the Tribunal on the part of the appellant is hereby confirmed and 85% of the total award amount comes to Rs.2,72,665/-.

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the 85% compensation awarded by the Tribunal at Rs.1,82,778/- is hereby enhanced to Rs.2,72,665/- 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, 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. 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 (CS VIII)

True Copy

Sub-Assistant Registrar

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To

1.The Special Subordinate Judge No.I,
Motor Accident Claims Tribunal,
Salem.

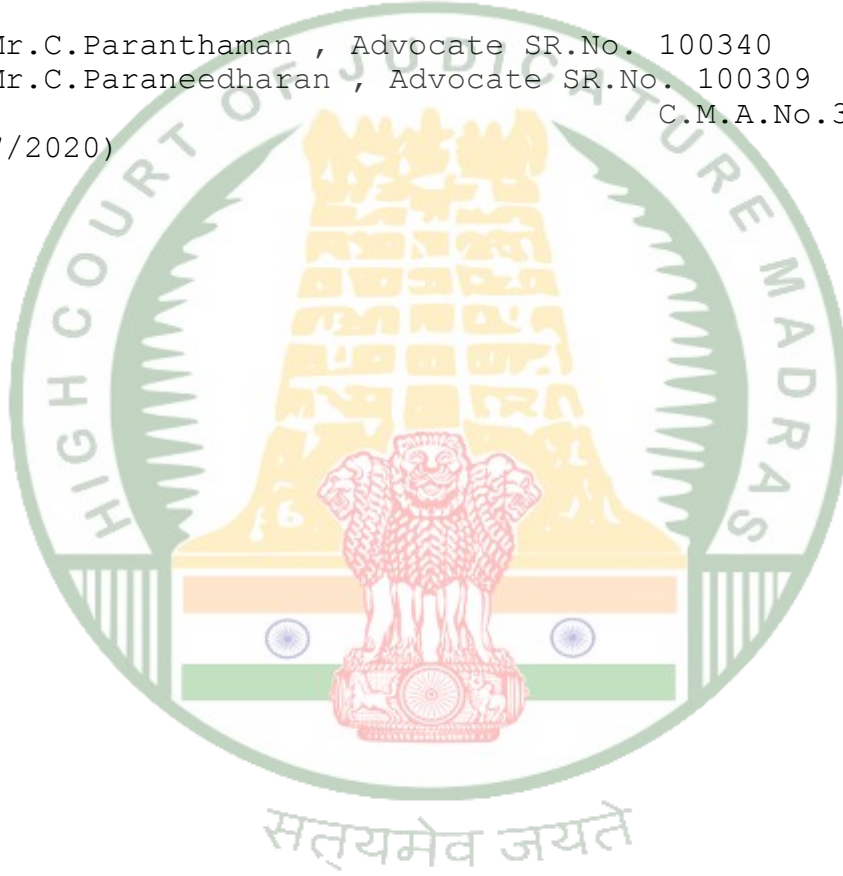
2.The Section Officer,
VR Section,
High Court,
Madras.

+1ccs to Mr.C.Paranthaman , Advocate SR.No. 100340

+2ccs to Mr.C.Paraneedharan , Advocate SR.No. 100309

C.M.A.No.3362 of 2019

A.SK(16/07/2020)



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