

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3143 of 2018

Dhilip Kumar

.. Appellant/Petitioner

Vs.

1.Revathi

2.The Divisional Manager,
United India Insurance Co. Ltd.,
situated at
No.46, Katpadi Salai,
Vellore.

.. Respondents/Respondents

(R1 remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 08.08.2017, made in M.C.O.P.No.261 of 2015, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Tiruvannamalai District.

For Appellant : Mr.F.Terry Chella Raja

For R2 : Mr.C.Paranthaman

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimant to set aside the award passed by the Tribunal dated 08.08.2017, made in M.C.O.P.No.261 of 2015, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Tiruvannamalai District and remand the M.C.O.P.No.261 of 2015 to the Tribunal, raising 22 grounds for enhancement of the compensation.

2.The appellant/claimant filed M.C.O.P.No.261 of 2015, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Tiruvannamalai District under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'), claiming a sum of Rs.70,00,000/- as compensation for the

injuries sustained by him in the accident that took place on 19.04.2015.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the claim petition is maintainable under Section 163-A of the Act and directed the 2nd respondent-Insurance Company to pay a sum of Rs.4,47,680/- as compensation to the appellant/claimant.

4.Not being satisfied with the compensation awarded by the Tribunal, the claimant has come out with the present appeal for enhancement of the same.

5.The learned counsel appearing for the appellant contended that the appellant was working as a driver and was earning a sum of Rs.3,300/- per month. He was 28 years at the time of accident. The amount awarded by the Tribunal is meager. The Tribunal failed to see that the appellant has incurred a sum of Rs.9,82,817.50 for medical treatment and the Tribunal awarded only a sum of Rs.15,000/- towards medical expenses. The Tribunal ought to have awarded compensation by applying the provisions of the Employees Compensation Act, towards medical expenses. The amount awarded by the Tribunal for pain and suffering is very meager. The Tribunal has not awarded any amount for future expenses, transport expenses, extra nourishment, attender charges, loss of amenities, mental agony, disfigurement, loss of income and prayed for setting aside the award and remand M.C.O.P.No.261 of 2015 to the Tribunal for fixing more compensation. In support of his contentions, the learned counsel appearing for the appellant relied on the judgment reported in 2015 (2) TN MAC 362 (DB) [M.Anbalagan Vs. K.M.Asalm Basha and others]:

"9.However, as rightly contended by the learned counsel for the second respondent, this Court is empowered to award compensation as payable under the Employees' Compensation Act, 1923. In Oriental Insurance Co. Ltd., V. Kaliya Pillai and another, 2002 (4) CTC 469 (DB) : 2003 (1) LW 113, a Division Bench of this Court held that the aggrieved or interested person can make a claim for compensation either under the Workmen's Compensation Act or under the Motor Vehicles Act. The only bar is that the claim cannot be made under both the Acts."

6.Mr.C.Paranthaman, learned counsel takes notice for the 2nd respondent-Insurance Company and contended that the amount awarded by the Tribunal is just compensation and appellant is not entitled to any enhancement 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 award of the Tribunal it is seen that the appellant has filed petition under Section 163-A of the Act. He has contended that he was working as a driver under the 1st respondent and earning a sum of Rs.3,300/- per month. The appellant was referred to Medical Board and the Medical Board assessed disability at 60%. The Tribunal considering the nature of injuries, percentage of disability suffered by the appellant and the nature of work done by the appellant, held that the appellant suffered functional disability and multiplier method is proper one to assess the loss of income of the appellant and granted compensation by applying the multiplier method. The appellant was aged 29 years at the time of accident. The Tribunal, applying the multiplier of '18', awarded compensation of Rs.4,27,680/- under the head of permanent disability, a sum of Rs.15,000/- towards medical expenses and a sum of Rs.5,000/- towards pain and suffering. The contention of the learned counsel appearing for the appellant that the Tribunal ought to have awarded more compensation for medical expenses and amounts awarded under the head of pain and suffering are meager and the Tribunal ought to have awarded more compensation under the heads raised by the appellant in the grounds of appeal, are without merits. When the claim is made under Section 163-A of the Act, the claimant is entitled to a maximum sum of Rs.15,000/- towards medical expenses and a sum of Rs.5,000/- towards pain and suffering. In view of the same, the appellant is not entitled for any enhancement of the compensation.

9.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.4,47,680/- awarded by the Tribunal as compensation to the appellant/claimant, along with interest and costs is confirmed. The 2nd respondent-Insurance Company is directed to deposit the award amount 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.261 of 2015. On such deposit, the appellant/claimant is permitted to withdraw the

award amount with interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

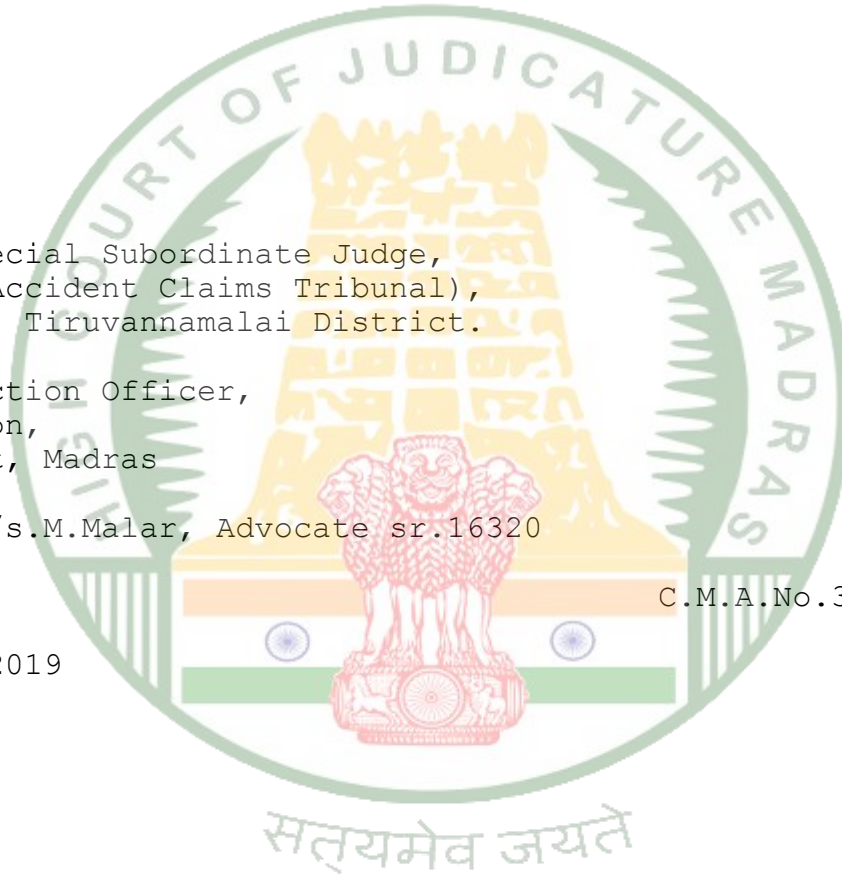
1.The Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Cheyyar, Tiruvannamalai District.

2. The Section Officer,
V.R Section,
High Court, Madras

+1cc to M/s.M.Malar, Advocate sr.16320

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