

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.768 2003

and

CMP Nos.19335 of 2004 and 94 of 2013

Moses @ Kumar ...Appellant/Petitioner

Versus

1.T. Thirumaran

2.United India Insurance Co. Ltd.,
Motor Third Party Claims Office,
No.38, Anna Salai, Chennai - 2.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 08.10.2002 made in M.C.O.P.No.2071 of 1999 on the file of the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai.

For Appellant : Mr.J. Mahalingam

For 2nd Respondent : Mr.R. Ravichandran

R1 Exparte : No appearance

J U D G M E N T

This appeal is arises out of M.C.O.P. No.2071 of 1999 dated 08.10.2002 on the file of the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai.

2. This appeal is filed by the claimant having not satisfied with the award passed by the Tribunal and seeking for enhancement of the compensation. The case of the petitioner is that on 05.05.1999 at about 01.30 hours, the appellant/petitioner along with others was travelling in the Load Van bearing Registration No.TN-74-P-1751 from Chengalpet to Tambaram for Cooly work. When the Load van reached near Oorapakkam Main Road, at Kilambakkam, due to the rash and negligent driving by its Driver, the Load Van suddenly dashed against a road side tree. Due to the impact, the petitioner had sustained serious injuries. Due to severe injuries, the

petitioner has filed claim petition in M.C.O.P. No.2161 of 1999 before the Tribunal seeking for compensation of Rs.10,00,000/- (Rupees Ten Lakhs Only).

3. On consideration of the materials and evidence available on the record, the Tribunal has awarded a total compensation of Rs.2,00,000/- (Rupees Two Lakhs Only) to the appellant along with interest @ 9% p.a. from the date of filing the petition till the date of the deposit of the payment.

4. Aggrieved over the same, the claimant has filed the present appeal seeking for enhancement of the compensation awarded by the tribunal.

5. The learned counsel for the appellant submit that the Tribunal has awarded a meagre sum of Rs.2,00,000/- (Rupees Two Lakhs Only) without considering the health condition of the claimant. The P.W.1 has clearly deposed that the claimant sustained Fracture Left Hand, Communitied Fracture Left Elbow, Injuries to Abdomen, Fracture of D-10, D-11 Vertebrae, Loss of sensation below the Hib and other serious multiple injuries all over the body and P.W.2 also corroborated with the evidence of the P.W.1. Further, The P.W.2 assessed the disability of the claimant as 125% restricted to 100% whereas the Tribunal has awarded only Rs.70,000/- (Rupees Seventy Thousand Only) without considering the permanent disability.

6. The learned counsel for the 2nd respondent also submit that the claimant has sustained serious multiple injuries having permanent disability to 100% whereas the quantum of compensation may be increased considering the permanent disability of the claimant.

7. Heard both side and perused the available materials on records.

8. The factum of the accident and the manner of the accident has to be rash and negligence and entitlement of the claimant/plaintiff under Section 163A is not in dispute. The quantum of the compensation awarded by the Tribunal is alone disputed.

9. After going through oral and documentary evidence of P.W.2, Doctor, coupled with the Ex.P3, disability certificate, this Court is considered view that disability suffered by the petitioner is fixed 75%. It will be appropriate to fix his notional monthly income at Rs.3,500/-. Considering the age of the deceased was 35 at the time of accident, the correct multiplier to be applied is '16' as such the 'loss of income' is calculated as follows:-

" Rs.3500 X 12 X 75% X 16 = Rs.5,04,000/-"
Thus, a sum of Rs.5,04,000/- is granted as compensation under the head "Loss of earning capacity". Further, the compensation under the other heads has been awarded as follows:

SL. No.	Particulars	Amount (in Rs.)
1	Loss of earning capacity as stated above	5,04,000.00
2	Transport Expenses	3000.00
3	Extra-nourishment	3000.00
4	Pain, shock and Sufferings	20,000.00
5	Loss of amenities	30,000.00
6	Medical Expenses	10,000.00
1 Amount	Tota	5,70,000.00

10. Thus, the compensation awarded by the Tribunal has been enhanced by Rs.3,70,000/- from Rs.2,00,000/- to Rs.5,70,000/- with interest @ 7.5% per annum from the date of petition till the date of deposit excluding the period from 30.06.2010 to 28.01.2013 as in which period the CMA was dismissed on 30.06.2010 and restored on 28.01.2013. The Insurance Company is directed to deposit the award amount enhanced by this Court to the credit of M.C.O.P. No.2071 of 1999 after deducting the amount already deposited if any, within a period of three weeks from the date of receipt of copy of this order and on such deposit, the appellant/claimant is permitted to withdraw the same along with the interest.

11. In the result, the appeal is partly allowed. Accordingly, the impugned award passed by the Tribunal is modified. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal, II Judge,
Court of Small Causes, Chennai.

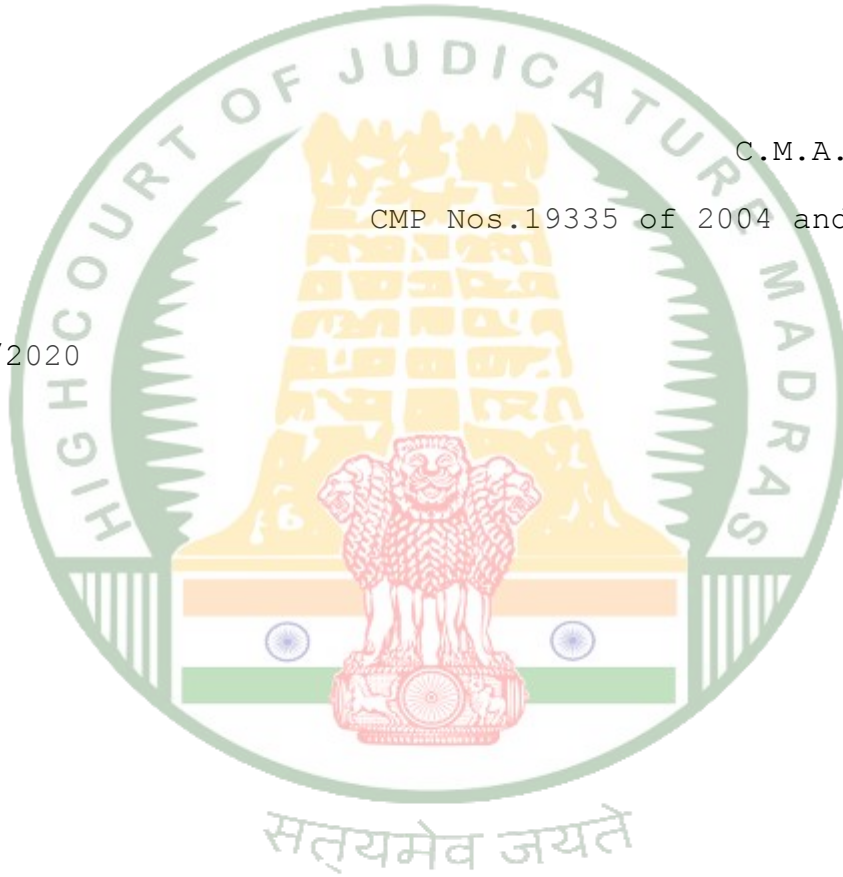
2.The Section Officer,
V.R.Section, High Court, Madras.

+lcc to M/s.R.Ravichandran, Advocate Sr.3554

+lcc to M/s.J.Mahalingam, Advocate Sr.3362

C.M.A.No.768 2003
and
CMP Nos.19335 of 2004 and 94 of 2013

rr[col
srg 28/08/2020



WEB COPY