

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1123 of 2013

S.Suresh Kumar .. Appellant /Claimant

Vs.

- 1.R.Ganapathy
(R-1 is an unnecessary party and hence given up)
- 2.The Oriental Insurance Company Ltd.,
Rep. by its Branch Manager,
Tiruvannamalai District. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 02.08.2011 made in M.C.O.P.No.975 of 2001 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Tindivanam.

For Appellant : Mr.R.Sreedhar

For R2 : Mr.M.J.Vijayaraaghavan

R1 : Given up

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This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 02.08.2011 made in M.C.O.P.No.975 of 2001 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Tindivanam.

2.The appellant is the claimant in M.C.O.P.No.975 of 2001 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Tindivanam. He filed the above claim petition, claiming a sum of Rs.50,50,000/- as compensation for the injuries sustained by him in the accident that took place on 02.09.2000.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to rash and negligent driving by the driver of the Ambassador Car belonging to the first respondent and directed the second respondent-Insurance Company, being insurer of the Ambassador Car to pay a sum of Rs.9,28,520/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the Tribunal failed to see that the appellant completed Diploma in Mechanical Engineering and also got a job in abroad. Due to the accident, his future was kept in dark. The Tribunal has failed to consider the education qualification of the appellant and Ex.P33/the letter received from the company for taking up medical fitness certificate. The appellant examined his friend as P.W.5, who deposed that he received a sum of Rs.57,000/- per month as salary. The Tribunal ought to have fixed the monthly income of the appellant at Rs.57,000/-. The appellant as P.W.1 deposed about the nature of injuries suffered by him and the Tribunal failed to consider Exs.P8 to P18, which clearly reveal that appellant has taken various treatment from the year 2000 to 2004. The Tribunal also failed to consider the evidence of P.W.4/Doctor, who deposed about the nature of injuries and consequences of injury. The Tribunal failed to consider the evidence of P.W.3, the wife of the appellant and P.W.6, the attender of the appellant. The Tribunal ought to have granted a sum of Rs.60,000/- as compensation for attendant charges instead of Rs.24,000/-. The Tribunal erred in deducting 1/3rd towards personal expenses in the case of injury while adopting multiplier. The Tribunal failed to consider the loss of earning of the appellant in abroad and ought to have granted more compensation. The amounts awarded by the Tribunal under different heads are meagre and therefore, prayed for enhancement of compensation.

6.Per contra, Mr.M.J.Vijayaraaghavan, learned counsel appearing for the second respondent/Insurance Company contended that the appellant failed to prove that he got a job in abroad. The appellant examined his friend as P.W.5, who deposed that he received a sum of Rs.57,000/- per month in the year 2011. P.W.5

is an Engineering graduate, while the appellant is only a Diploma holder. The appellant was earning Rs.5,120/- per month as per Exs.P29 and P30 the salary certificate filed by the appellant. The Tribunal has rightly disbelieved the evidence of P.W.6, the alleged attender that he was paid Rs.5,000/- per month by the appellant. The Tribunal considering the oral and documentary evidence let in by the appellant, awarded compensation by adopting multiplier method excessively. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent/Insurance Company and perused the materials available on record.

8. It is the case of the appellant that he was working in Goodwill Engineering Ltd., Pondicherry and was earning a sum of Rs.5,120/- per month. He got an offer to work in a Shipping Company at abroad and due to the injuries sustained by him in the accident, he lost the opportunity to go abroad. The contention of the appellant that the Tribunal ought to have fixed monthly salary of the appellant at Rs.57,000/-, is without merits. P.W.5 is an Engineering graduate and he was earning a sum of Rs.57,000/- per month in the year 2011 as salary, while the accident has occurred in the year 2000. The appellant, who is a Diploma holder has compared himself with P.W.5, who is an Engineering graduate. The Tribunal considering all the materials on record, has rightly fixed the income of the appellant at Rs.5,120/- per month. Considering the nature of injuries sustained by the appellant, the Tribunal awarded compensation by adopting multiplier method but the Tribunal erred in deducting 1/3rd towards personal expenses from the salary. The appellant is entitled to compensation by fixing Rs.5,120/- as monthly income without any deduction. P.W.4/Doctor examined the appellant and certified that appellant suffered 73% disability and issued Ex.P40/disability certificate to that effect. The appellant was aged about 29 years at the time of accident. Hence, the correct multiplier applicable is '18'. Thus, the amount awarded by the Tribunal towards loss of income is enhanced to Rs.8,07,322/- (Rs.5,120/- X 12 X 18 X 73/100).

9. It is the contention of the appellant that one Govindasamy was appointed by the appellant as attender/P.W.6 and he was paid a sum of Rs.5,000/- per month as salary, but the Tribunal has awarded only Rs.24,000/- instead of Rs.60,000/- towards attendant charges. The said contention is untenable. The Tribunal considering the fact that the appellant was earning only Rs.5,120/- per month, disbelieved the evidence of P.W.6 and granted Rs.24,000/- towards attendant charges at the rate of

Rs.1,000/- per month for two years, which is proper. The appellant has produced documents to show that he was taking treatment from 2000 to 2004. The Tribunal has not awarded any amounts towards extra nourishment and loss of amenities. Hence, a sum of Rs.20,000/- each is granted towards extra nourishment and loss of amenities. The amounts awarded by the Tribunal towards medical expenses, transportation, pain and sufferings and damage to clothes are just and reasonable and hence, the same are 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	5,38,320/-	8,07,322/-	Enhanced
2.	Medical bills	2,32,908/-	2,32,908/-	Confirmed
3.	Transportation	32,292/-	32,292/-	Confirmed
4.	Pain and suffering	1,00,000/-	1,00,000/-	Confirmed
5.	Damage to cloth	1,000/-	1,000/-	Confirmed
6.	Attendant charges	24,000/-	24,000/-	Confirmed
7.	Extra nourishment	-	20,000/-	Granted
8.	Loss of amenities	-	20,000/-	Granted
	Total	Rs.9,28,520/-	Rs.12,37,522/-	enhanced by Rs.3,09,002/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,28,520/- is hereby enhanced to Rs.12,37,522/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court 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 order to the credit of M.C.O.P.No.975 of 2001 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Tindivanam. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court,

along with interest and costs, less the amount if any, already withdrawn by making necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi

To

1.The Additional Sub-Judge,
Motor Accidents Claims Tribunal,
Tindivanam.

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

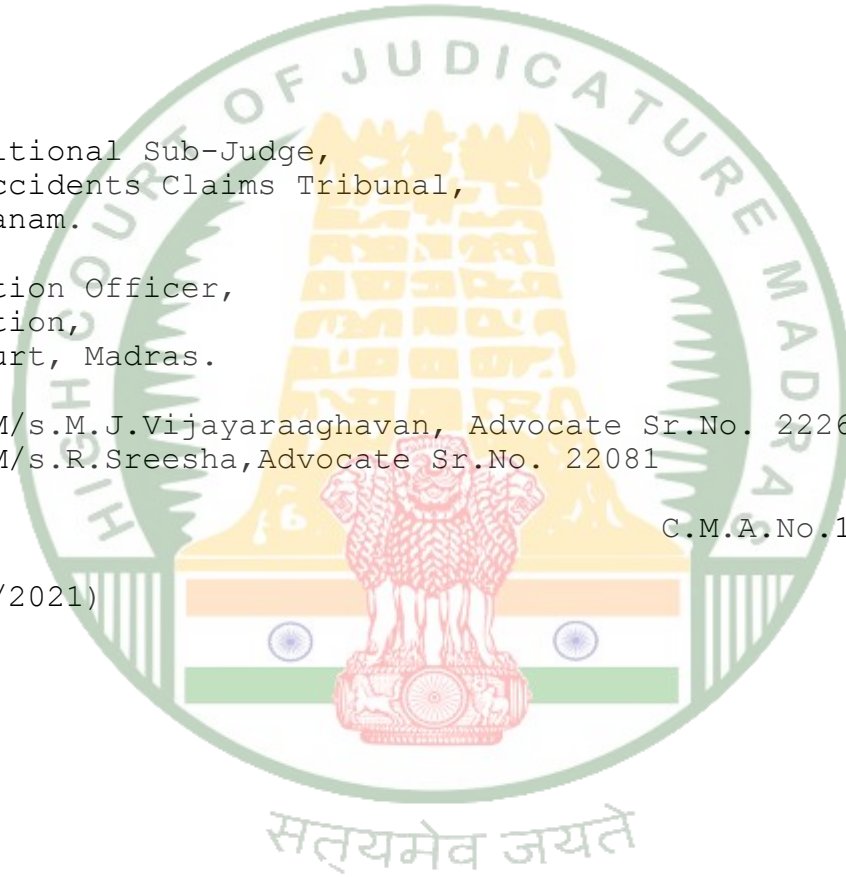
+1 cc to M/s.M.J.Vijayaraaghavan, Advocate Sr.No. 22266

+1 cc to M/s.R.Sreesha, Advocate Sr.No. 22081

C.M.A.No.1123 of 2013

RSV (CO)

RMP (04/03/2021)



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