

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1980 of 2009

K.Durai

...Appellant/Petitioner

Vs.

1.V.Elumalai

2.Oriental Insurance Co.Ltd.,
B.R.Annex III Floor,
No.35, Ramakrishna Street,
Tambaram,
Chennai.

...Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.07.2008 made in M.C.O.P.No.75 of 2003 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Judge, III Fast Track Court, Chennai.

For Appellant : Mr.A.Shanmugaraj

For Respondents : Mr.J.Vijayaraghavan for R2

: R1 Ex-parte

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant seeking enhancement of compensation granted by the Tribunal in the award dated 22.07.2008 made in M.C.O.P.No.75 of 2003 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Judge, III Fast Track Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.75 of 2003 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Judge, III Fast Track Court, Chennai. He filed the said claim petition claiming a sum of Rs.1,00,000/- as compensation for the injuries sustained by him in the accident that took place on 17.01.2002.

3.The case of the appellant is that on 17.01.2012 at about 17.00 hours, when the appellant was travelling in a motorcycle bearing registration No.TN-07-L-1868 at GST Road, from south to north, the driver of a stationary van bearing registration No.TN-22-C-9567, suddenly moved the vehicle on the same direction and turned on the right side and dashed against the appellant's motorcycle, thereby causing grievous injuries to the appellant.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the stationary van, which is owned by the first respondent and insured with the second respondent-Insurance Company, and directed the second respondent-Insurance Company, on behalf of the first respondent, to pay a sum of Rs.70,000/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.Heard Mr.S.S.Swaminathan, learned counsel for the appellant and Mr.M.Krishnamoorthy, learned counsel for the second respondent and perused the materials available on record.

6.A perusal of the records shows that the claimant has sustained fractures and grievous injuries all over the body. P.W.2 and P.W.3 have assessed the partial permanent disability as 40%, considering the nature of injuries sustained by the appellant. The Tribunal found it exorbitant and reduced the same to 30% and awarded a sum of Rs.60,000/- (Rs.2,000/- per percentage of disability) towards "disability". This Court feels that the Tribunal was correct in awarding Rs.60,000/- under the head of disability and hence, this Court is not inclined to interfere with the same. The Tribunal has awarded a sum of Rs.1,000/- towards the "damages of vehicle" and the same is hereby enhanced to Rs.5,000/-. The Court below has awarded a sum of Rs.5,000/- towards pain and sufferings, which is meager and the same is hereby increased to Rs.10,000/-. The Court below has awarded a sum of Rs.2,000/- each under the heads "food and nutrition" and "conveyance expenditure". Considering the cost of living and prolonged treatment, the amount awarded by the Tribunal is very low and hence, this Court enhances the same to Rs.5,000/- each. The Tribunal failed to award any amount towards "attender charges". This Court awards a sum of Rs.5,000/- towards the same. The award passed by this Court under various heads is extracted hereunder:

S.No	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 Sufferings	5,000/-	10,000/-	enhanced
3.	Food and Nutrition	2,000/-	5,000/-	enhanced
4.	Conveyance Expenditure	2,000/-	5,000/-	enhanced
5.	Damages of Vehicle	1,000/-	5,000/-	enhanced
6.	Attender Charges	---	5,000/-	awarded
	Total	70,000/-	90,000/-	enhanced by Rs.20,000/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.70,000/- is hereby enhanced to Rs.90,000/-, 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 necessary Court fee, if any, on the enhanced compensation. The second respondent-Insurance Company, on behalf of the first respondent, 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 already withdrawn, if any. No costs.

सत्यमेव जयते

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

hvk

To

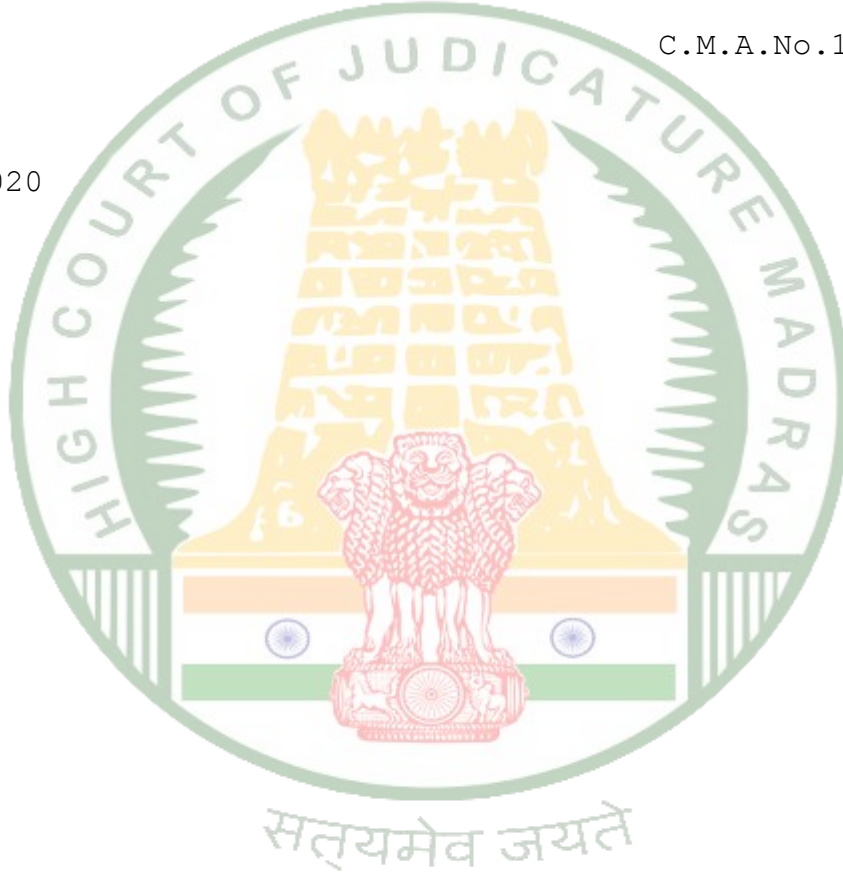
1.The Motor Accident Claims Tribunal,
Additional District and Sessions Judge,
III Fast Track Court, Chennai.

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

+1 cc to M/s.A.Shanmugaraj Advocate sr6651

C.M.A.No.1980 of 2009

ad(co)
aa08/09/2020



WEB COPY