

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2402 of 2009

Gurunathan

.. Appellant /Petitioner

Vs.

1.V.Subramanian

2.The New India Assurance Company Limited
Represented by its Branch Manager
Neela South street
Nagapattinam District.

.. Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.04.2009 made in M.C.O.P.No.341 of 2007 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Nagapattinam.

For Appellant : Mr.M.Thamizhavel

For R1 : No appearance

For R2 : Mr.G.Anandan

J U D G M E N T

The matter is heard through "Video-Conferencing" .

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 09.04.2009 made in M.C.O.P.No.341 of 2007 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Nagapattinam.

2.The appellant is claimant in M.C.O.P.No.341 of 2007 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Nagapattinam. He filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 21.02.2006.

3.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 tractor belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said tractor to pay a sum of Rs.1,36,000/- 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 appellant suffered grievous injuries and lost his earning capacity due to the injuries suffered by him in the accident. The Tribunal ought to have granted compensation by adopting multiplier method. The appellant was working as a coolie and was earning a sum of Rs.3,000/- per month at the time of accident. The Tribunal erroneously fixed a sum of Rs.2,500/- per month. The Tribunal failed to award compensation to the satisfaction of the appellant and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not proved that he suffered functional disability and lost his earning capacity. P.W.2/Doctor assessed the disability of the appellant as 51%, which is excessive. P.W.2/Doctor did not depose that the appellant suffered functional disability. The Tribunal in such circumstances has rightly awarded compensation by adopting percentage method and the total compensation awarded by the Tribunal is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Though the 1st respondent has entered appearance through the counsel, there is no representation on behalf of him, when the matter is taken up for hearing.

8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and perused the entire materials on record.

9. From the materials available on records, it is seen that it is the contention of the appellant that he was an agricultural coolie and claimed that he was earning a sum of Rs.3,000/- per month. He failed to substantiate the said contention. In the absence of any material evidence, the Tribunal fixed a sum of Rs.2,500/- per month as notional income of the appellant and awarded a sum of Rs.15,000/- (Rs.2,500/- X 6) towards loss of income for six months. The accident is of the year 2006. The amount fixed by the Tribunal as notional income is meagre. Hence, a sum of Rs.3,000/- as claimed by the

appellant is fixed as monthly income of the appellant. Due to the injuries and disability, the appellant would not have worked atleast for a period of nine months. Hence, the compensation awarded by the Tribunal towards loss of income is hereby modified to Rs.27,000/- (Rs.3,000/- X 9).

9(i) The appellant contended that he suffered multiple injuries in the accident and examined P.W.3/Doctor to prove the same. P.W.3/Doctor has deposed about the nature of injuries, disability suffered by the appellant and certified that the appellant suffered 51% disability. From the evidence of P.W.3/Doctor, it is seen that the appellant has not suffered any functional disability and lost his earning power. Hence, the appellant is not entitled to compensation by adopting multiplier method. The Tribunal has awarded a sum of Rs.65,000/- towards disability and loss of earning power. The accident is of the year 2006 and hence, the appellant is entitled to a sum of Rs.2,000/- per percentage of disability. Thus, a sum of Rs.1,02,000/- (Rs.2,000/- X 51%) is awarded towards 51% disability.

9(ii) The appellant has marked four discharge summaries as Exs.P4, P5, P7 and P9 and contended that he has taken treatment as in-patient in Nagapattinam Government Hospital from 21.02.2006 to 25.02.2006, then took treatment in Tanjore Medical College Hospital from 25.02.2006 to 10.03.2006, then took treatment in Vinayaga Mission Medical College Hospital from 22.01.2007 to 02.03.2007 and 27.08.2007 to 24.09.2007 totally for 88 days. The Tribunal has not awarded any amount towards attendant charges. The appellant is entitled to a sum of Rs.25,000/- towards attendant charges. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.5,000/- awarded by the Tribunal towards extra nourishment is hereby enhanced to Rs.15,000/-. The Tribunal has not awarded any amount towards damage to clothes. Hence, a sum of Rs.1,000/- is awarded towards damage to clothes. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby 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 or reduced
1.	Disability and loss of earning power	65,000	1,02,000	Enhanced
2.	Loss of income	15,000	27,000	Enhanced

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
3.	Pain and suffering	20,000	20,000	Confirmed
4.	Discomfort	10,000	10,000	Confirmed
5.	Extra nourishment	5,000	15,000	Enhanced
6.	Transportation	2,000	2,000	Confirmed
7.	Medical expenses	13,960	13,960	Confirmed
8.	Attendant charges	-	25,000	Granted
9.	Damage to clothes	-	1,000	Granted
	Total	Rs.1,30,960/- The Tribunal awarded Rs.1,35,690/- rounded off to Rs.1,36,000/-	Rs.2,15,960/- rounded off to Rs.2,16,000/-	Enhanced by Rs.80,000/-

Though the Tribunal arrived at a sum of Rs.1,30,960/-, awarded a sum of Rs.1,36,000/- as compensation to the appellant.

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,36,000/- is hereby enhanced to Rs.2,16,000/- 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 2nd 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. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

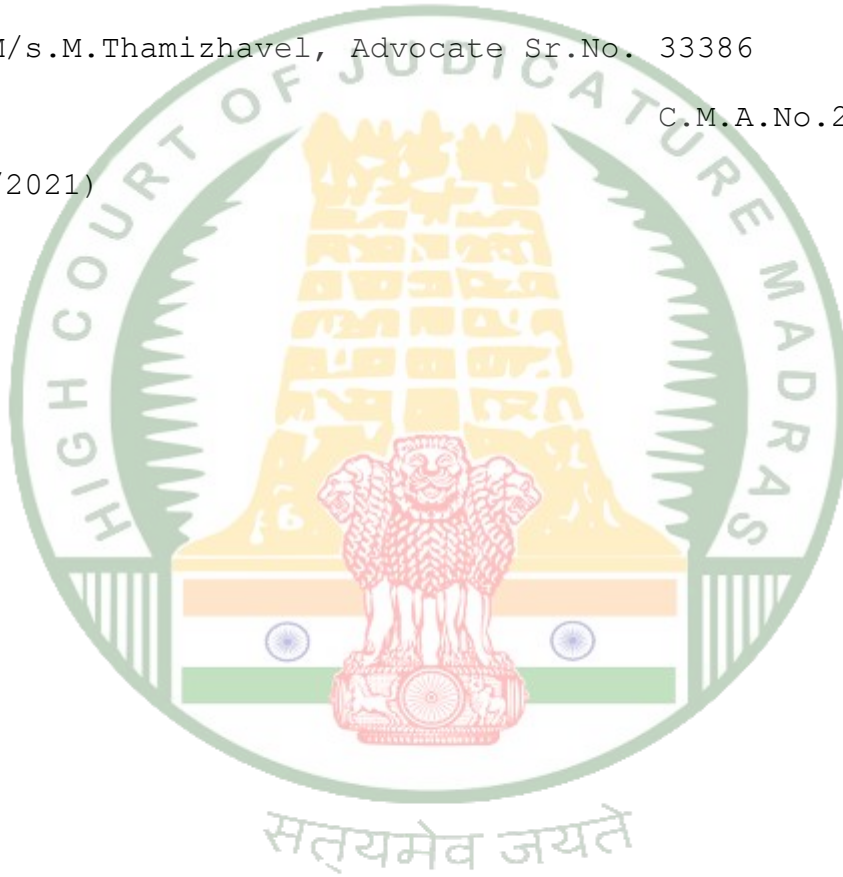
1.The Chief Judicial Magistrate
Motor Accident Claims Tribunal
Nagapattinam.

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

+1 cc to M/s.M.Thamizhavel, Advocate Sr.No. 33386

C.M.A.No.2402 of 2009

NMI (CO)
RMP (22/03/2021)



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