

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1337 of 2013

M.Madhu

..Appellant/Petitioner

Vs.

1.E.K.Devaraj

2.Royal Sundaram Alliance Ins. Co.,
Rep.by its Manager,
No.46, Whites Road, Chennai-14.

3.T.Senthil Kumar

4.Oriental Insurance Co.Ltd.,
Rep.by its Branch Manager,
No.146, West Car Street,
Kumar complex 1st Floor,
Thiruchengodu.

..Respondents/Respondents

(Respondents 1 and 3 are remained ex-parte before the Tribunal.
Hence, no batta paid against respondents 1 and 3)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.12.2012 made in M.C.O.P.No.315 of 2006 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Krishnagiri.

For Appellant	: Mr.D.Ramesh Kumar
For R1 & R3	: Ex-parte
For R2	: Name Printed-No appearance
For R4	: Mr.S.Arunkumar

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in award dated 15.12.2012, made in

M.C.O.P.No.315 of 2006, on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Krishnagiri.

2.The appellant is the claimant in M.C.O.P.No.315 of 2006 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Krishnagiri. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in an accident that took place on 28.06.2003.

3.The case of the appellant is that on 28.06.2003, the appellant took the lorry bearing Registration No.KA 01 C 2729, belonging to the third respondent and insured with the 4th respondent from Salem with Barley load along with cleaner by name Madhu and was proceeding to Nagpur. While the said lorry was proceeding in Salem-Dharmapuri National Highways near Government Arts College, Dharmapuri, on 29.06.2003 at about 03.00 A.M. in a cautious manner, the lorry bearing Registration No.TN-38-R-2571, belonging to the first respondent and insured with the second respondent was driven by its driver in a rash and negligent manner from the opposite direction, due to which the driver of the said lorry lost his control and dashed against the lorry of the appellant, even though the appellant turned his vehicle towards extreme left side of the road. Because of the said accident, the appellant sustained multiple injuries all over his body.

4.The Tribunal, considering the pleadings, oral and documentary evidences, held that the accident occurred due to the rash and negligent driving by the driver of the lorry belonging to the first respondent and insured with the second respondent and directed the second and fourth respondents to pay a sum of Rs.4,63,248/- as compensation to the appellant. Not being satisfied with the said amount awarded by the Tribunal, the appellant has come up with the present appeal seeking enhancement of compensation.

5.Heard Mr.D.Ramesh Kumar, learned counsel appearing for the appellant and Mr.S.Arunkumar, learned counsel appearing for the fourth respondent.

6. A perusal of the records shows that the claimant has sustained compound comminuted fracture Humerous with Radial nerve injury, compound fracture lower third of right radius with inferior Radiolnar joint dislocation, compound shattered fracture upper third of femur and Throchanter, commuted shattered bicandylar fracture tibia, fracture fibula upper 1/3, fracture radius and ulna lower and left side and grievous injuries all over the body. Dr.S.Krishnakumar (PW2) has assessed the partial permanent disability as 62%. Considering the nature

of injuries sustained by the appellant and treatment details and evidence of P.W.2, Ex.A.3 to Ex.A6, Ex.A7 and Ex.A9, the Court below has reduced to 55%.

7. It is seen that the appellant was working as a driver under the first respondent and was earning not less than a sum of Rs.7,500/- per month, but he did not produce any material to prove his income. Hence, the Court below has taken Rs.3,000/- towards his monthly income. The appellant's age is 35, as mentioned in the claim petition, but in the wound certificate/Ex.A3, it was mentioned as 44 and in the Discharge Summary it was mentioned as 42 and in disability certificate it was mentioned as 45. Hence, the Court below has decided the appellant's age approximately as 42 and adopted the multiplier method to calculate the permanent disability. Accordingly, as per Sarala Verma's case, 2009 ACJ 1298, lesser multiplier 15 was taken into consideration and the Tribunal awarded a sum of Rs.2,97,000/- (Rs.3,000 X 12 X 15 X 55%). The same is hereby confirmed. The Court below has awarded a sum of Rs.7,000/- towards Extra Nourishment and the same is hereby enhanced to Rs.10,000/-. Considering Ex.A8/Medical bills, the Tribunal has awarded a sum of Rs.1,18,248/- towards medical expenses, which is hereby confirmed. The Tribunal has awarded a sum of Rs.5,000/- towards transportation, the same is hereby enhanced to Rs.10,000/-. The Tribunal has awarded a sum of Rs.5,000/- towards attender charges and the same is also hereby enhanced to Rs.10,000/-. The Tribunal has awarded a sum of Rs.10,000/- towards loss of income during the period of treatment. Considering the cost of living and the expenses, the same is hereby enhanced to a sum of Rs.50,000/-. The Tribunal has not awarded any amount towards the Nutritious Food. Considering the health of the claimant and the expenses that was spent on food, this Court is inclined to award a sum of Rs.5,000/- for the same. The amount awarded by the Tribunal under other heads are confirmed hereby. 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.	Loss of Permanent disability	2,97,000/-	2,97,000/-	confirmed
2.	Pain and Sufferings	20,000/-	20,000/-	confirmed
3.	Medical expenses	1,18,248/-	1,18,248/-	confirmed

4.	Transportation	5,000/-	10,000/-	enhanced
5.	Extra Nourishment	7,000/-	10,000/-	enhanced
6.	Attendant Charges	5,000/-	10,000/-	enhanced
7.	Loss of income during the treatment period	10,000/-	50,000/-	enhanced
8.	Damages to cloth and articles	1,000/-	1,000/-	confirmed
9.	Nutritious food	-----	5,000/-	granted
	Total	Rs.4,63,248/-	Rs.5,21,248/- -rounded off by Rs.5,22,000/-	enhanced by Rs.58,752/-

6. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,63,248/- is hereby enhanced to Rs.5,22,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second and fourth respondents are directed to deposit the enhanced award amount by 50% each 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/claimant 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

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Sub-Assistant Registrar

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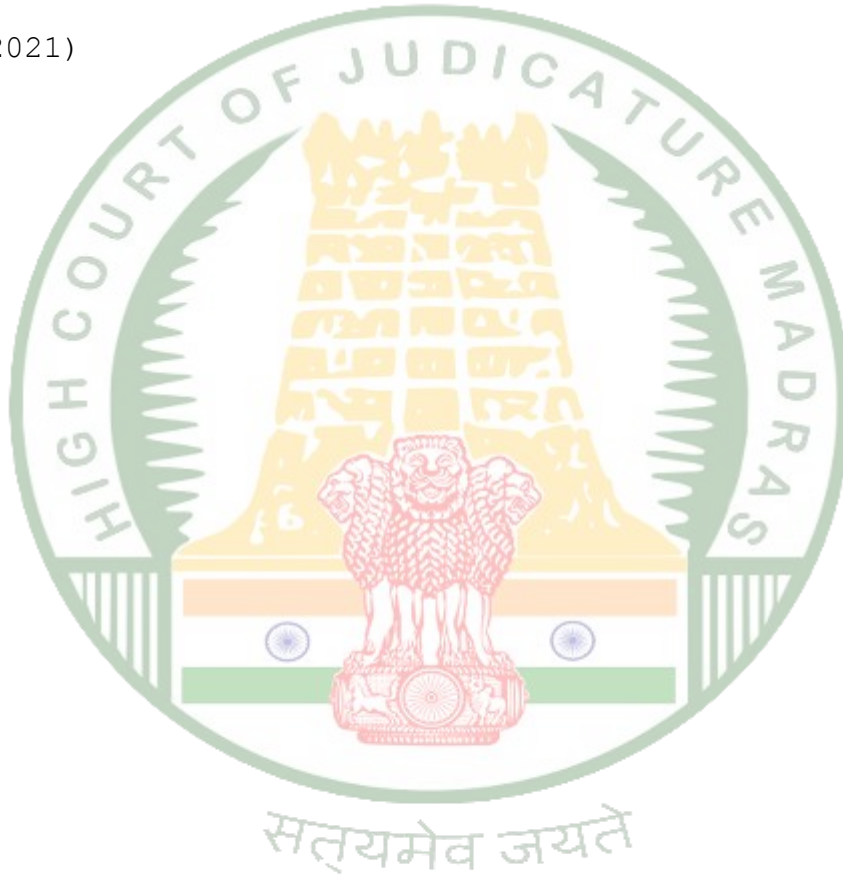
1. The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Krishnagiri.

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

+1 CC to Mr.S.Arunkumar, Advocate sr 7807.
+1 CC to Mr.D.Ramesh Kumar, Advocate sr 7586.

C.M.A.No.1337 of 2013

SR(CO)
SP(08/02/2021)



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