

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1234 of 2015

Annamalai

.. Appellant/Claimant

Vs.

1.S.Anandhaprabhu

2.A.Raja

3.National Insurance Company,

No.7, Raja Street,

Erode Main Road,

Gopichettipalayam - 638 476. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.07.2014 made in M.C.O.P.No.497 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Erode.

For Appellant : Mr.P.Parthikannan

For R1 and R2 : Mr.M.Guruprasad

For R3 : Mr.S.Vadivel

सत्यमेव जयते
J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 31.07.2014 in M.C.O.P.No.497 of 2013, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Erode.

2.The appellant is the claimant in M.C.O.P.No.497 of 2013, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Erode. He filed the above claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.05.2011.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the Bajaj Tempo/first respondent herein, belonging to the second respondent and directed the third respondent-Insurance Company, being insurer of the vehicle, to pay a sum of Rs.3,54,500/- as compensation to the appellant/claimant.

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

5.The learned counsel appearing for the appellant contended that the appellant/claimant suffered grievous injuries and P.W.2/Doctor who examined the appellant has assessed the disability as 45%. The accident had occurred in the year 2011. The Tribunal has granted only a sum of Rs.2,000/- per percentage and awarded Rs.90,000/- towards disability. The Tribunal ought to have adopted the multiplier method for granting compensation. He further submitted that the appellant was working as a mason / construction contractor and was earning a sum of Rs.25,000/- per month. The Tribunal has fixed a meagre amount of Rs.4,500/- per month as monthly income of the appellant and awarded a very meagre compensation. Due to the injuries, the appellant had taken treatment as in-patient at the Government Hospital, Erode, for 30 days from 29.05.2011 to 27.06.2011. Further, he underwent three major operations in three different days i.e., on 30.05.2011, 02.06.2011 and 04.06.2011, and plates and screws were fixed in his leg. The Tribunal has not awarded any amount towards attendant charges and amounts awarded by the Tribunal under different heads are meagre and therefore, prayed for enhancement of compensation.

6.Per contra, Mr.S.Vadivel, learned counsel appearing for the third respondent/Insurance Company contended that the appellant has not proved that only due to injuries, he is totally immobilized and unable to do any work. The appellant failed to prove that he suffered functional disability. In the absence of any material evidence, the percentage method adopted by the Tribunal is proper and the appellant is not entitled for compensation, by applying multiplier method and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the second and third respondents and perused all the materials available on record.

8.The contention of the learned counsel appearing for the appellant is that the appellant was working as a mason-

construction contractor and earning a sum of Rs.25,000/- per month. Though P.W.3 - employee of the appellant was examined to prove the avocation and income of the deceased, no documentary evidence was produced to substantiate the said contention. The accident is of the year 2011. Considering the age and nature of work, a sum of Rs.6,500/- per month fixed as income of the appellant. Due to fracture suffered by the appellant, he is not able to do any work as he was doing earlier and the appellant is entitled to get compensation by adopting multiplier method. From the materials available on record, it is seen that the appellant has not proved that he is totally immobilized or he is disabled functionally and that he could not do any work as he was doing earlier. In such circumstances, the percentage method adopted by the Tribunal is proper. P.W.2/Doctor certified that the appellant suffered 45% of disability. The accident took place on 29.05.2011. The Tribunal has granted only a sum of Rs.2,000/- per percentage of disability. The appellant is entitled to compensation at the rate of Rs.3,000/- per percentage of disability. Thus, the amount awarded by the Tribunal towards permanent disability is enhanced to Rs.1,35,000/- (Rs.3,000/- X 45% of disability). The appellant has taken treatment in hospital for 30 days as inpatient. The Tribunal has not awarded any amount towards attendant charges. Hence, a sum of Rs.25,000/- is granted towards attendant charges. The Tribunal has awarded only a meagre sum of Rs.27,000/- towards loss of income. Considering the nature of injuries and disability suffered by the appellant, the appellant is entitled to a sum of Rs.52,000/- (Rs.6,500 X 8) towards the loss of income for eight months. The Tribunal has awarded meagre sum of Rs.10,000/-, Rs.1,000/- and Rs.1,000/- towards extra nourishment, damages to clothes & vehicle and transportation and the same are hereby enhanced to Rs.20,000/-, Rs.2,000/- and Rs.5,000/- respectively. The amounts awarded by the Tribunal under other heads are just and reasonable and hence they are hereby confirmed. In view of the same, 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	27,000/-	52,000/-	enhanced
2.	Disability	90,000/-	1,35,000/-	enhanced
3.	Pain & suffering	75,000/-	75,000/-	confirmed

4.	Extra nourishment	10,000/-	Rs.20,000/-	enhanced
5.	Cloth & damage to vehicle	1,000/-	Rs.2,000/-	enhanced
6.	Transportation	1,000/-	Rs.5,000/-	enhanced
7.	Previous medical expenses	75,500/-	Rs.75,500/-	confirmed
8.	Future medical expenses	25,000/-	25,000/-	confirmed
9.	Loss of earning capacity	50,000/-	50,000/-	confirmed
10.	Attendant charges	-	25,000/-	granted
	Total	Rs.3,54,500/-	Rs.4,64,500/-	enhanced by Rs.1,10,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,54,500/- is hereby enhanced to Rs.4,64,500/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The third respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court 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. On such deposit, the appellant/claimant 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 (CCC)

//True Copy//

Sub Assistant Registrar

gbi

To

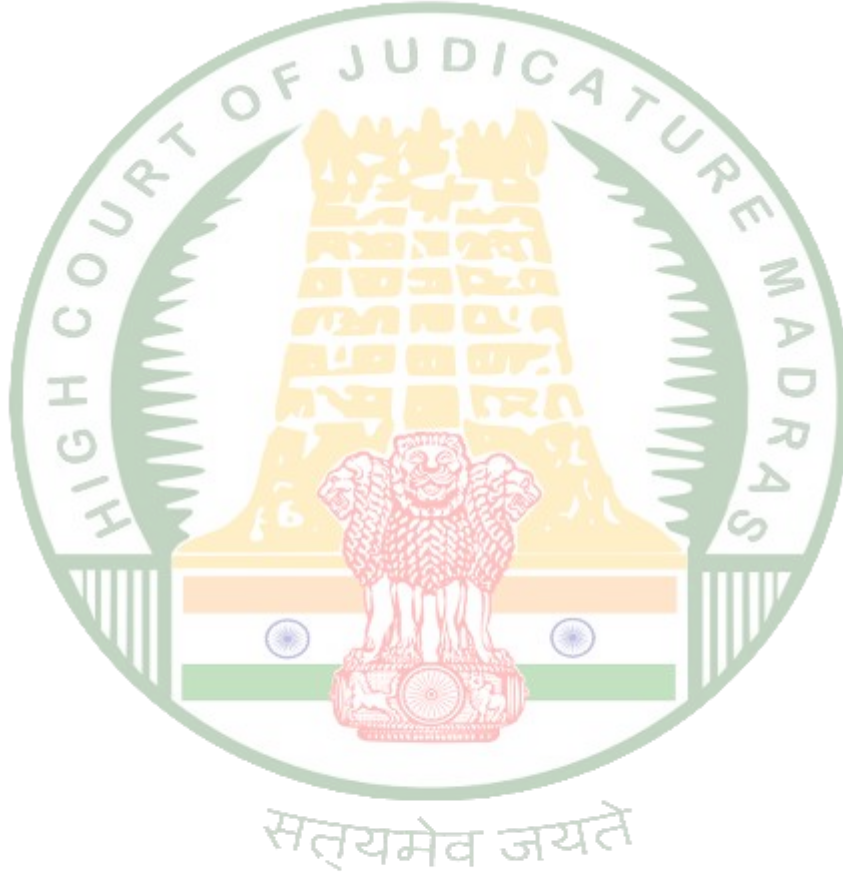
1. The Special Sub Judge,
Motor Accident Claims Tribunal, Erode.

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

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.1035
+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.413
+1cc to Mr.S.Vadivel, Advocate SR.355

C.M.A.No.1234 of 2015

NMI (CO)
CB(28/08/2020)



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