

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1357 of 2013

Selvam

.. Appellant/Petitioner

Vs.

1.Narayanasamy
(R1 remained exparte before the Tribunal)

2.The Divisional Manager
The United India Insurance Co. Ltd.
No.46, Katpadi salai
Vellore.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.03.2011 made in M.C.O.P.No.243 of 2008 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruvannamalai.

For Appellant : Mr.F.Terry Chellaraja

For R2 : Ms.I.Malar

R1 : Exparte

J U D G M E N T

सत्यमेव जयते

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 31.03.2011 made in M.C.O.P.No.243 of 2008 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruvannamalai.

2.The appellant is claimant in M.C.O.P.No.243 of 2008 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruvannamalai. He filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.05.2008.

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 van belonging to the 1st respondent and directed both the 1st respondent as well as the 2nd respondent/Insurance Company being insurer of the said van to jointly and severally pay a sum of Rs.52,500/- 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 at the time of accident, the appellant was aged 49 years at the time of accident and was earning a sum of Rs.6,000/- per month by doing centering work. The Tribunal without considering the same, awarded only a meagre sum of Rs.5,000/- towards loss of income. The appellant suffered fracture of left radius, contusion and multiple injuries all over the body. The appellant examined the doctor as P.W.2, who has assessed the disability of the appellant as 30% and marked the disability certificate as Ex.P7. The Tribunal without assigning any reason, reduced the disability to 20% and awarded only a sum of Rs.20,000/- towards disability at the rate of Rs.1,000/- per percentage of disability. The Tribunal awarded only a lumpsum amount of Rs.20,000/- towards transportation, medical expenses, attendant charges and future medical expenses. The amounts awarded by the Tribunal under different heads are meagre 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 produced any document to prove that he was earning a sum of Rs.6,000/- per month by doing centering work and there was loss of income during treatment period. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal rightly awarded a sum of Rs.5,000/- towards loss of income. The Tribunal after considering all the materials available on record, awarded just compensation. 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 2nd respondent/Insurance Company and perused all the materials available on record.

8. It is the contention of the appellant that in the accident, he suffered fracture of left radius, contusion,

deformity in the left wrist and multiple injuries all over the body. The appellant examined the doctor as P.W.2, who assessed the disability of the appellant as 30% and marked the disability certificate as Ex.P7 to prove the injuries. The Tribunal reduced the disability to 20% on the ground that P.W.2/Doctor has examined the appellant after 2 ½ years of the accident and awarded a sum of Rs.20,000/- (Rs.1,000/- X 20%) towards disability at the rate of Rs.1,000/- per percentage of disability. The respondents did not let in any oral and documentary evidence to disprove the disability assessed by P.W.2/Doctor and disability certificate marked as Ex.P7. Therefore, the appellant is entitled to compensation for 30% disability, as there is no contra evidence. The accident is of the year 2008 and hence, a sum of Rs.2,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.60,000/- (Rs.2,000/- X 30%).

8(i).The appellant has contended that at the time of accident, he was earning a sum of Rs.6,000/- per month by doing centering work. The appellant failed to prove the said contention. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal awarded a sum of Rs.5,000/- towards loss of income, which is meagre. The accident is of the year 2008 and hence, a sum of Rs.6,000/- is fixed as monthly income of the appellant. Due to the injuries, the appellant would not have attended his work atleast for five months. Thus, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.30,000/- (Rs.6,000/- X 5).

8(ii).According to the appellant, he has taken treatment as in-patient in the Government hospital, Tiruvannamalai, on 10.05.2008 at 4.50 p.m. and discharged on the same day at 6.45 p.m., which is evident by Ex.P5/discharge summary. The Tribunal awarded a lumpsum compensation of Rs.20,000/- towards transportation, medical expenses, attendant charges and future medical expenses. Considering the nature of injuries sustained by the appellant, a sum of Rs.2,000/- is separately awarded towards attendant charges and Rs.10,000/- each is awarded towards extra nourishment and loss of amenities. A sum of Rs.7,500/- awarded by the Tribunal towards pain & suffering is just and reasonable and hence, the same is hereby 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 or reduced
1.	Transportation, medical expenses, attendant charges, future medical expenses	20,000	20,000	Confirmed
2.	Attendant charges	-	2,000	Granted
3.	Extra nourishment	-	10,000	Granted
4.	Loss of amenities	-	10,000	Granted
5.	Disability	20,000	60,000	Enhanced
6.	Pain and suffering	7,500	7,500	Confirmed
7.	Loss of income	5,000	30,000	Enhanced
	Total	52,500	1,39,500	Enhanced by Rs.87,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.52,500/- is hereby enhanced to Rs.1,39,500/- 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. Both the respondents are directed to jointly and severally 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 (CS-VIII)

//True copy//
Sub Assistant Registrar

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To

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

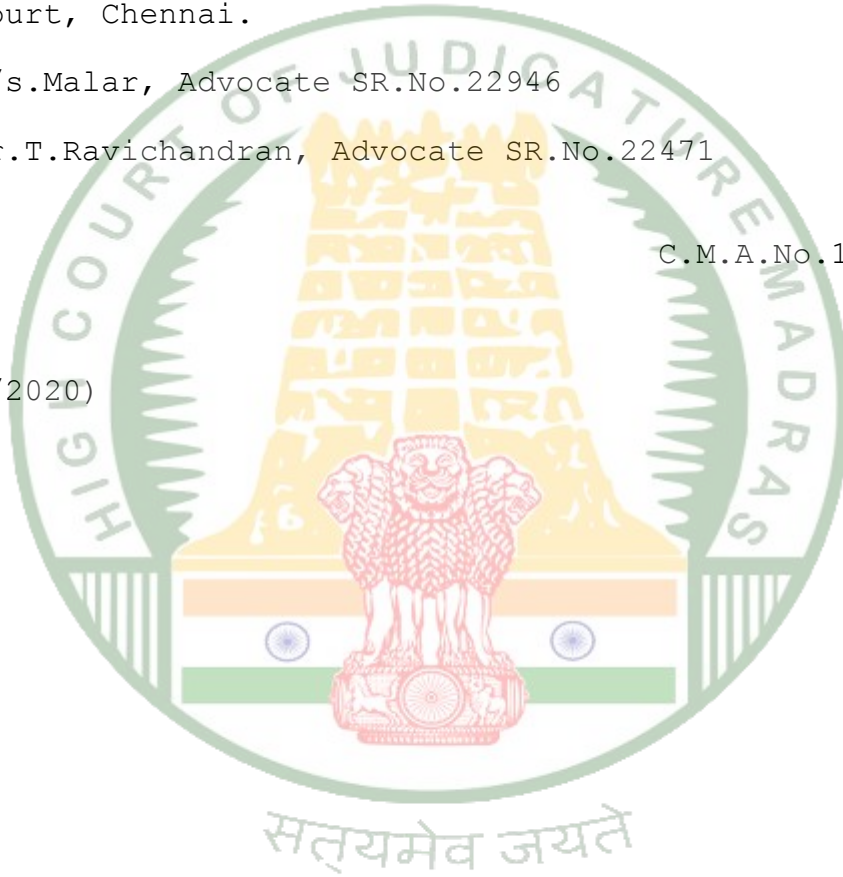
2.The Section Officer
V.R.Section
High Court, Chennai.

+1cc to M/s.Malar, Advocate SR.No.22946

+1cc to Mr.T.Ravichandran, Advocate SR.No.22471

C.M.A.No.1357 of 2013

GMV (23/10/2020)



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