

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.06.2020

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 1536 of 2011

S.Muthukumar

...Appellant/ Petitioner

Vs

1.Prabhakaran

2.R.Krishnaswamy

3.The New India Assurance Company Ltd.,
Avinashi Road,
Peelamedu,
Coimbatore-4.

...Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgement and decree dated 16.02.2006 made in M.C.O.P. No. 195 of 2005, on the file of Motor Accident Claims Tribunal, II Additional Sub Court, Coimbatore.

For Appellant : Mr. C.D. Sugumar

For R1 and R2 : No Appearance

For R3 : Mr. J. Chandran

J U D G M E N T

This Civil Miscellaneous Appeal is filed for enhancement of the compensation granted by the award dated 16.02.2006 made in M.C.O.P. No. 195 of 2005 on the file of Motor Accident Claims Tribunal, II Additional Sub Court, Coimbatore.

2. The appellant is the claimant in M.C.O.P. No. 195 of 2005 on the file of Motor Accident Claims Tribunal, II Additional Sub Court, Coimbatore. He filed the above claim petition, claiming a sum of Rs.14,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.06.2004.

3. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident took place due to rash and negligent driving by the 1st respondent, driver of the Lorry belonging to the 2nd respondent and directed the respondents, who are the driver, owner and insurer of the Lorry, to jointly and severally pay a sum of Rs.4,15,500/- as compensation to the appellant.

4. Not satisfied with the amounts awarded by the Tribunal in the award dated 16.02.2006 made in M.C.O.P. No. 195 of 2005, the appellant has come out with the present appeal seeking enhancement of the compensation.

5. The learned counsel appearing for the appellant contended that the appellant has produced the medical bills for Rs.4,72,000/-, but the Tribunal has awarded only a sum of Rs.2,00,000/- towards medical expenses. The Tribunal misconstrued the evidence of P.W.3-Doctor that the appellant suffered 75% disability. The Tribunal failed to consider that the appellant took continuous treatment in various Hospitals for various ailments and he is virtually crippled after the accident. The Tribunal has taken into consideration the evidence of P.W.2, the Doctor from K.G. Hospital for arriving at a conclusion with regard to percentage of disability. The Tribunal failed to see that P.W.2-Doctor assessed the disability only with regard to right hand of the appellant, whereas P.W.3-Doctor assessed the disability suffered by the appellant for the whole body as 75%. The Tribunal erred in accepting the evidence of P.W.2-Doctor that concession was given to appellant with regard to medical expenses and erred in awarding only Rs.2,00,000/- for medical expenses and prayed for enhancement of compensation.

6. Per Contra, Mr.J.Chandran, learned counsel appearing for the 3rd respondent/Insurance Company contended that the Tribunal considering the nature of injuries, evidence of P.W.2 and P.W.3-Doctors, the disability certificates issued by them, accepted the evidence of P.W.2-Doctor and fixed that the appellant suffered 30% disability and awarded a sum of Rs.30,000/- for disability. In addition to the said amount, the Tribunal awarded a sum of Rs.1,50,000/- for loss of earning capacity, in the absence of any proof. Hence, the appellant is not entitled to compensation for 75% disability. The Tribunal considering the evidence of P.W.2-Doctor, has awarded a sum of Rs.2,00,000/- towards medical expenses. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Though notice has been served on the respondents 1 and 2 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

8. Heard the learned counsel appearing for the appellant as well the 3rd respondent/Insurance Company and perused the materials available on record.

9. From the materials on record, it is seen that the appellant has examined P.W.2 and P.W.3-Doctors with regard to nature of injuries and treatment taken. P.W.2, the Doctor from K.G. Hospital deposed about the nature of injuries and treatment given to the appellant. P.W.2, the Doctor deposed that the right leg of the appellant was paralysed totally and certified that the appellant suffered 30% disability. P.W.3, the Doctor from Ganga Hospital certified that the appellant suffered 75% disability, for the very same disability. Considering the evidence of P.W.2 and P.W.3-Doctors, the Tribunal found that P.W.3-Doctor has not stated as to how he arrived at the disability of the appellant as 75%. On the other hand, P.W.2-Doctor has given reason for arriving the disability of the appellant as 30%. In view of the same, the Tribunal has accepted the disability certified by P.W.2-Doctor and awarded a sum of Rs.30,000/- towards disability. The Tribunal has given valid reason for the same. Hence, there is no error in the said finding warranting interference by this Court. In addition to awarding a sum of Rs.30,000/- towards disability, the Tribunal has awarded a sum of Rs.15,000/- towards loss of income during the treatment period and Rs.1,50,000/- towards loss of earning capacity. In view of the same, the appellant is not entitled for any enhancement towards disability.

10. As far as the medical bills are concerned, P.W.2-Doctor deposed that concession was given to the appellant with regard to cost of medical treatment and only a sum of Rs.2,70,000/- was collected from the appellant. In view of the same, the contention of the learned counsel for the appellant that the appellant is entitled to Rs.4,72,000/- for medical expenses, is without merits. The Tribunal has granted only Rs.2,00,000/- instead of Rs.2,70,000/-. The appellant is entitled to a sum of Rs.2,70,000/- towards medical expenses. Thus, the amount awarded by the Tribunal at Rs.2,00,000/- towards medical expenses is enhanced to Rs.2,70,000/-. Further, the appellant has produced Ex.P13-medical bills, being the amount spent in Ganga Hospital and Bishop Hospital and hence, he is entitled to a sum of Rs.2,500/- and Rs.2,296/- towards medical bills.

11. It is the contention of the appellant that he has taken treatment as inpatient in Ganga Hospital, K.G. Hospital and Bishop Hospital from 12.06.2004 to 19.06.2004, for bone injuries and from 09.10.2004 to 01.11.2004, for spinal cord injuries. But, the Tribunal has not awarded any amount towards attendant charges, loss of amenities and damages to cloth. Considering the

nature of injuries and period of treatment taken by the appellant, as evident from Exs.P8 and P9, this Court awards a sum of Rs.15,000/-, Rs.10,000/- and Rs.1,000/- towards attendant charges, loss of amenities and damages to cloth respectively. The amount awarded by the Tribunal towards extra nourishment is meagre and hence, the same is hereby enhanced to Rs.10,000/-. The amounts awarded by the Tribunal under 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. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent disability	30,000/-	30,000/-	Confirmed
2.	Attendant charges	-	15,000/-	Granted
3.	Transportation	500/-	500/-	Confirmed
4.	Extra nourishment	5,000/-	10,000/-	Enhanced
5.	Loss of income	15,000/-	15,000/-	Confirmed
6.	Pain and suffering	15,000/-	15,000/-	Confirmed
7.	Medical expenses	2,00,000/-	2,70,000/-	Enhanced
8.	Loss of earning capacity	1,50,000/-	1,50,000/-	Confirmed
9.	Damages of cloth	-	1,000/-	Granted
10.	Loss of amenities	-	10,000/-	Granted
11.	Medical bills	-	4,796/-	Granted
	Total	Rs.4,15,500/-	Rs.5,21,296/- rounded off to Rs.5,21,300/-	Enhanced by Rs.1,05,800/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,15,500/- is hereby enhanced to Rs.5,21,300/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally directed to deposit the enhanced award amount now determined by this Court, together 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 to the credit of M.C.O.P. No. 195 of 2005 on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Coimbatore. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gbi/gsa

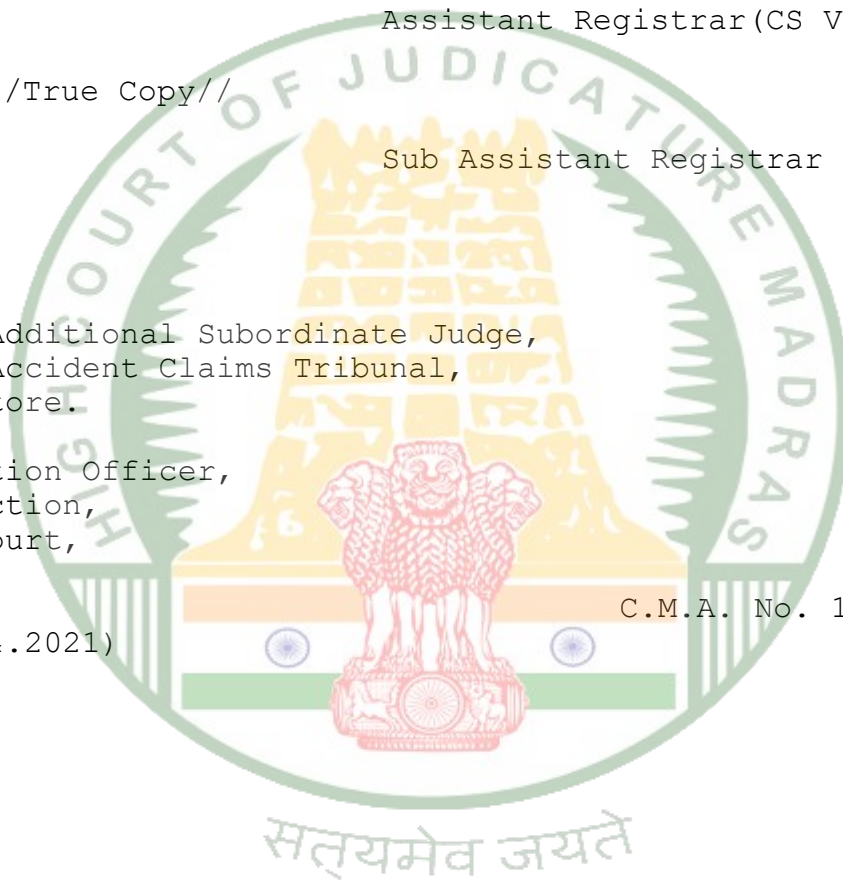
To

1.The II Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Coimbatore.

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

C.M.A. No. 1536 of 2011

A.SK(16.04.2021)



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