

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1749 of 2012

V.Srinivasan

.. Appellant/Petitioner

Vs.

1.S.Jaya Seelan
1st respondent remained ex-parte

2.The New India Assurance Co.Ltd.,
No.92, East Coast Chambers, I Floor,
G.N.Chetty Road, T.Nagar,
Chennai 600 017. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.11.2011 made in M.A.C.T.O.P.No.4612 of 2007 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.N.M.Muthurajan

For R1 सत्यमेव जयते : Ex-Parte

For R2 : Mr.R.Neethiperumal

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JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 01.11.2011 made in MACT.O.P.No.4612 of 2007 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.4612 of 2007 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.04.2007.

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 load Auto bearing Registration No.TN-21-M-8308, belonging to the first respondent, insured with the second respondent and directed the second respondent to pay a sum of Rs.2,93,800/- as compensation to the appellant on behalf of the first respondent. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

4.Heard Mr.N.M.Muthurajan, learned counsel appearing for the appellant / claimant and Mr.R.Neethiperumal, learned counsel appearing for the second respondent.

5.A perusal of the records shows that the claimant has sustained transverse fracture of proximal 1/3rd right femur, type II compound fracture dislocation of right femur, fracture of proximal 1/3rd right tibia and grievous injuries all over the body. Dr.K.J.Mathiazhagan (PW2) has assessed the partial permanent disability as 55% and the Tribunal has reduced the same to 15% and awarded a sum of Rs.30,000/- (Rs.2,000/- per percentage of disability) towards disability. Considering the nature of injuries and the year of the accident, the same is enhanced to Rs.90,000/-. It is seen from the claim petition that the claimant was doing a Channels finishing work and earning a sum of Rs.9,000/- per month. He has produced a certificate issued by Sree Saravana Plastic and Tools, Chennai to show his monthly income. He has not produced any proper evidence to prove the income as required by law. Hence, in the absence of any documentary evidence, as per the precedent, the notional monthly income is fixed as Rs.4,500/- As per the second schedule of M.V.Act, the multiplier applied is 18 as per Sarala Varma's Case. Hence, his future loss of income or earning power is $\text{Rs.4,500/-} \times 12 \times 18 \times 15\% = \text{Rs.1,45,800/-}$, and the amount awarded by the Tribunal is confirmed hereby. The Tribunal has awarded a sum of Rs.5,000/- towards transportation, which is very meager and the same is enhanced to Rs.10,000/-. The amounts awarded by the Tribunal under other heads are confirmed. 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 earning power/capacity	1,45,800/-	Rs.1,45,800/-	confirmed
2.	Permanent Disability	30,000/-	Rs.90,000/-	enhanced
3.	Loss of Income during Treatment	27,000/-	Rs.27,000/-	confirmed
4.	Transportation	5,000/-	Rs.10,000/-	enhanced
5.	Extra Nourishment	5,000/-	Rs.5,000/-	confirmed
6.	Damages to Clothes and Articles	1,000/-	Rs.1,000/-	confirmed
7.	Medical Expenses	35,000/-	Rs.35,000/-	confirmed
8.	Attendant Charges	5,000/-	5,000	confirmed
9.	Pain and Sufferings	40,000/-	Rs.40,000/-	confirmed
	Total	Rs.2,93,800/-	Rs.3,58,800/-	enhanced by Rs.65,000/-

6. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,93,800/- is hereby enhanced to Rs.3,58,800/- together along 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 respondent/Transport Corporation 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/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 (CS-VI)

sbn

To

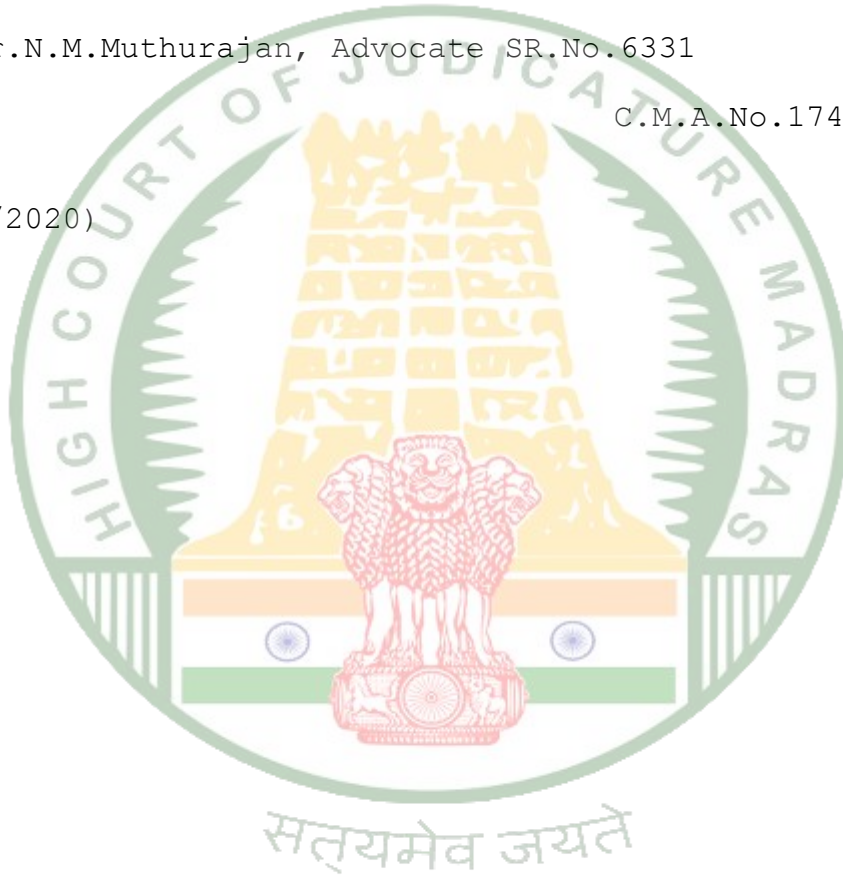
1.The II Judge, Small Causes Court,
Chennai.

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

+1cc to Mr.N.M.Muthurajan, Advocate SR.No.6331

C.M.A.No.1749 of 2012

LN (CO)
GMY (25/08/2020)



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