

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1732 of 2015

Sabapathi

.. Appellant/Petitioner

Vs.

1.R.Vasanthi

2.The Oriental Insurance Company Limited,
Branch Office,
No.90-A, Thuraiyur Road,
Namakkal Town.

.. Respondents/Respondents

(1st respondent remained exparte before
the Tribunal and hence, notice dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.09.2012 made in M.C.O.P.No.282 of 2011 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

For Appellant : Mr.C.Thangaraju

For R2 : Mr.D.Bhaskaran

R1 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 05.09.2012 made in M.C.O.P.No.282 of 2011 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

2.The appellant is the claimant in M.C.O.P.No.282 of 2011 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal. He filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 11.09.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the bus belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the bus to pay a sum of Rs.4,80,000/- as compensation to the appellant/claimant.

4.Not being satisfied with the amount 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 56 years and doing real estate business and was earning a sum of Rs.10,000/- per month. Due to the accident, the appellant's left leg below knee was fully amputated and due to injuries in the hip, there was no movement in right knee, hip and the appellant was totally bedridden and underwent various surgeries, skin grafting. P.W.2/Doctor assessed 80% permanent disability, which affects 100% future earning capacity of the appellant. Hence, multiplier method has to be adopted for awarding compensation towards loss of income. The Tribunal has not awarded any amount towards future medical expenses and loss of amenities. The compensation awarded by the Tribunal towards transportation, attendant charges, extra nourishment, pain and sufferings and permanent disability are meagre and prayed for enhancement of compensation.

6.Per contra, Mr.D.Bhaskaran, learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal has awarded a sum of Rs.80,000/- towards 80% disability and also a sum of Rs.1,60,000/- towards loss of earning capacity. In view of the excess amounts awarded by the Tribunal towards disability and loss of earning capacity, the appellant is not entitled for any enhancement. The appellant has not proved his avocation and income by producing valid documents. Therefore, a sum of Rs.7,000/- awarded by the Tribunal towards loss of income is excessive. The amounts awarded by the Tribunal under different heads are not meagre and 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 second respondent and perused the entire materials on record.

8.It is contention of the appellant that he was doing Real estate business and was earning a sum of Rs.10,000/- per month. The appellant failed to prove the said contention. Therefore, considering the year of accident and age of the appellant, a sum

of Rs.7,500/- per month is fixed as notional income of the appellant. Due to the accident, left leg below knee of the appellant was fully amputated and due to injuries in the hip, there was no movement in right knee, hip and he was totally bedridden and underwent various surgeries and skin grafting. The appellant was brought to the Tribunal in a cot for giving evidence. P.W.2/Doctor certified that appellant suffered 80% permanent disability and in his cross examination, P.W.2/Doctor has deposed that the appellant suffered 60% permanent disability. Therefore, considering the entire materials on record, this is a fit case to adopt multiplier method and grant compensation to the appellant for 60% disability. The appellant was aged 56 years and the accident occurred in the year 2010. The multiplier applicable is '9' and therefore, the compensation awarded by the Tribunal towards disability is modified to Rs.4,86,000/- [Rs.7,500/- X 12 X 9 X 60/100]. In view of the amount awarded by the tribunal for disability by applying multiplier method, the sum of Rs.17,000/- and Rs.1,60,000/- respectively awarded by the Tribunal towards injuries and loss of earning capacity are set aside.

9.The appellant has taken treatment in the hospital as in-patient from 11.09.2010 to 15.10.2010 and the Tribunal has not awarded any amount towards attendant charges. Therefore, a sum of Rs.25,000/- is granted towards attendant charges. Considering the percentage of disability and period of treatment taken by the appellant, a meagre sum of Rs.15,000/- awarded by the Tribunal towards pain and sufferings is enhanced to Rs.40,000/-. The amounts awarded by the Tribunal towards extra nourishment and transportation are meagre and the same are enhanced to Rs.30,000/- and Rs.10,000/- respectively. The sum of Rs.7,000/- awarded by the Tribunal towards loss of income is enhanced to Rs.7,500/-. The Tribunal has not awarded any amount towards loss of amenities. Considering the nature of injuries suffered by the appellant, a sum of Rs.25,000/- is awarded towards loss of amenities. The compensation awarded by the Tribunal towards medical expenses is just and reasonable and hence, the same is 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.	Disability	80,000/-	4,86,000/-	Enhanced
2.	Loss of earning capacity	1,60,000/-	-	Set aside
3.	Pain and sufferings	15,000/-	40,000/-	Enhanced

4.	Injuries	17,000/-	-	Set aside
5.	Loss of income	7,000/-	7,500/-	Enhanced
6.	Attendant charges	-	25,000/-	Granted
7.	Extra nourishment	10,000/-	30,000/-	Enhanced
8.	Transportation	1,000/-	10,000/-	Enhanced
9.	Loss of amenities	-	25,000/-	Granted
10	Medical bills	1,90,000/-	1,90,000/-	Confirmed
.				
	Total	Rs.4,80,000/-	Rs.8,13,500/-	enhanced by
		-	-	Rs.3,33,500/-
				-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,80,000/- is hereby enhanced to Rs.8,13,500/- 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 the necessary Court fee for Rs.3,33,500/-, the amount now enhanced by this Court as per the order of this Court dated 29.04.2015 made in M.P.No.1 of 2015 in C.M.A.SR.No.29225 of 2015. The second respondent-Insurance Company 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 to the credit of M.C.O.P.No.282 of 2011 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal. 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. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

krk

To

1. The Additional District Judge,
Motor Accident Claims Tribunal,
Namakkal.

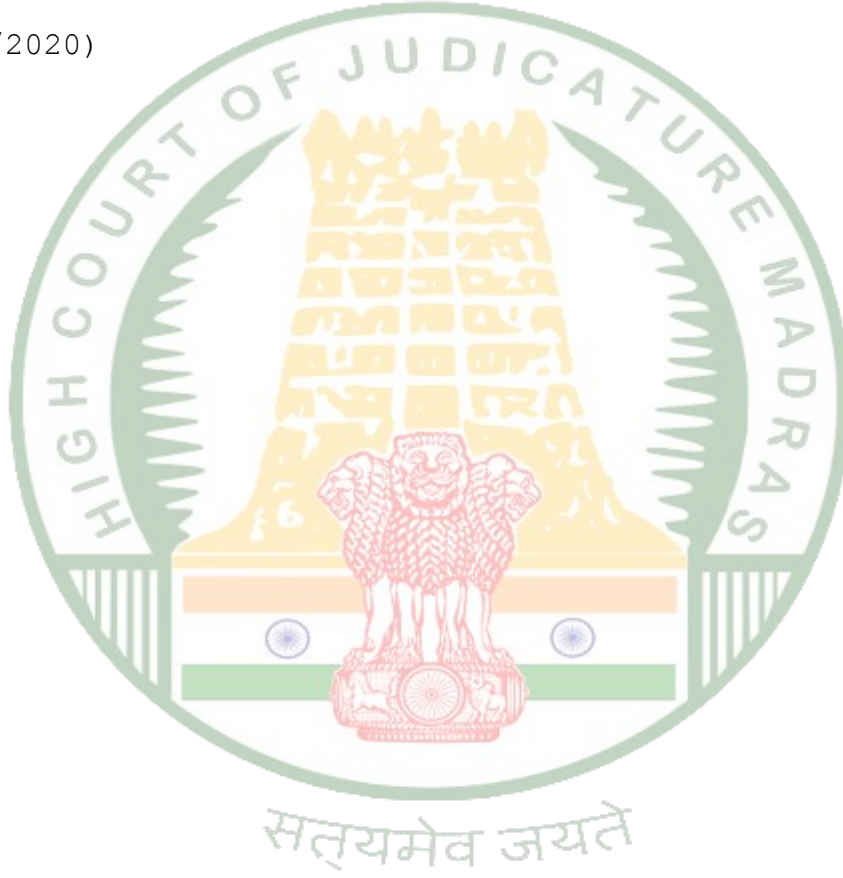
2.The Section Officer,
VR Section,
High Court,
Madras.

+3cc to Mr.C.Thangaraju, Advocate SR.No.873

+1cc to Mr.D.Baskaran, Advocate SR.No.797

C.M.A.No.1732 of 2015

RK(CO)
GMY(09/11/2020)



WEB COPY