

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1769 of 2013

Murugan

... Appellant/Petitioner

Vs.

1.Murugan

2.The Divisional Manager,  
United India Insurance Company Ltd.,  
No.46, Katpadi road, Vellore.

3.Kandeepan

4.The Divisional Manager,  
The New India Assurance Company Ltd.,  
No.106, Big Street,  
Thiruvannamalai.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.08.2010 made in M.C.O.P.No.334 of 2007 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Tiruvannamalai.

For Appellant : Mr.F.Terry Chellaraja

For Respondents : Ms.I.Malar for R2

RR1 & 3 : Exparte

R4 : Not ready in notice

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 06.08.2010 made in M.C.O.P.No.334 of 2007 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Tiruvannamalai.

2.The appellant is the claimant in M.C.O.P.No.334 of 2007 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Tiruvannamalai. He filed the above 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 03.01.2007.

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 lorry belonging to the first respondent and directed the second respondent, being insurer of the said lorry to pay a sum of Rs.1,21,700/- as compensation to the appellant. The claim petition was dismissed as against the respondents 3 and 4.

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 the appellant sustained fracture in leg. Due to the fracture, he could not continue his work as he was doing earlier. The appellant examined the Doctor as P.W.3, who has assessed the disability of the appellant as 40% and marked the disability certificate as Ex.P9 to prove the nature of injuries and disability suffered by him. The Tribunal ought to have adopted multiplier method and awarded compensation. The appellant was working as a driver and was earning a sum of Rs.6,000/- per month. The Tribunal fixed only a meagre sum of Rs.3,000/- as monthly income of the appellant and awarded a sum of Rs.15,000/- (Rs.3,000/- x 5 months) towards loss of income for a period of five months. The Tribunal has not awarded any amounts towards loss of amenities, damage to clothes, future medical expenses and disfigurement. 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 second respondent- Insurance Company contended that in the absence of any evidence with regard to income of the appellant, the Tribunal rightly fixed a sum of Rs.3,000/- as monthly income of the appellant and awarded a sum of Rs.15,000/- (Rs.3,000/- x 5) towards loss of income. The appellant has not produced any acceptable evidence that he suffered functional disability. Hence, the percentage method adopted by the Tribunal is proper. 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 second respondent and perused the entire materials on record.

8(a). It is the contention of the appellant that in the accident, he sustained fracture in leg. To substantiate the injuries sustained by him, he has examined Dr. Ravindran as P.W.3, who assessed the disability of the appellant as 40% and marked the disability certificate as Ex.P9. The Tribunal has accepted the percentage of disability assessed by the Tribunal, awarded a sum of Rs.90,000/- towards disability and the same is excessive. The appellant is entitled to only a sum of Rs.2,000/- per percentage of disability. Hence, the amount awarded by the Tribunal towards disability is reduced to Rs.80,000/- (40% x Rs.2,000/-). The appellant has not proved that he suffered functional disability. Hence, he is not entitled to compensation by adopting multiplier method.

(b). The appellant has contended that he was working as a driver and was earning a sum of Rs.6,000/- per month. The appellant failed to prove the said contention. In the absence of any material evidence, the Tribunal fixed a sum of Rs.3,000/- as monthly income of the appellant and awarded a sum of Rs.15,000/- towards loss of income for a period of five months. The accident is of the year 2007 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.6,000/- is fixed as monthly income of the appellant. Due to the injuries, the appellant would not have worked at least for a period of eight months. Thus, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.48,000/- (Rs.6,000/- x 8).

(c ). The appellant has taken treatment as in-patient in Government General Hospital, Chennai, from 04.01.2007 to 14.03.2007 nearly for 70 days. The amounts awarded by the Tribunal towards attendant charges, extra nourishment and transportation are meagre. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.21,000/- is awarded towards attendant charges for 70 days at the rate of Rs.300/- per day, Rs.15,000/- and Rs.5,000/- are awarded towards extra nourishment and transportation respectively. The Tribunal has not awarded any amount towards loss of amenities. Hence, a sum of Rs.20,000/- is awarded towards loss of amenities. The amounts awarded by the Tribunal under all 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 or reduced |
|-------|-------------------|---------------------------------|-----------------------------------|---------------------------------------------------|
| 1.    | Transportation    | 2,000/-                         | 5,000/-                           | enhanced                                          |
| 2.    | Extra nourishment | 2,000/-                         | 15,000/-                          | enhanced                                          |
| 3.    | Attendant charges | 2,000/-                         | 21,000/-                          | enhanced                                          |
| 4.    | Loss of income    | 15,000/-                        | 48,000/-                          | enhanced                                          |
| 5.    | Medical expenses  | 700/-                           | 700/-                             | confirmed                                         |
| 6.    | Pain & sufferings | 10,000/-                        | 10,000/-                          | confirmed                                         |
| 7.    | Disability        | 90,000/-                        | 80,000/-                          | reduced                                           |
| 8.    | Loss of amenities | -                               | 20,000/-                          | granted                                           |
|       | Total             | Rs.1,21,700/-                   | Rs.1,99,700/-                     | Enhanced by Rs.78,000/-                           |

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,21,700/- is hereby enhanced to Rs.1,99,700/- 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 amount of compensation. The second respondent 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 is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary application before the Tribunal. This appeal is dismissed as against the respondents 3 and 4. No costs.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vkr

To

The Principal Subordinate Judge,  
Motor Accident Claims Tribunal,  
Tiruvannamalai.

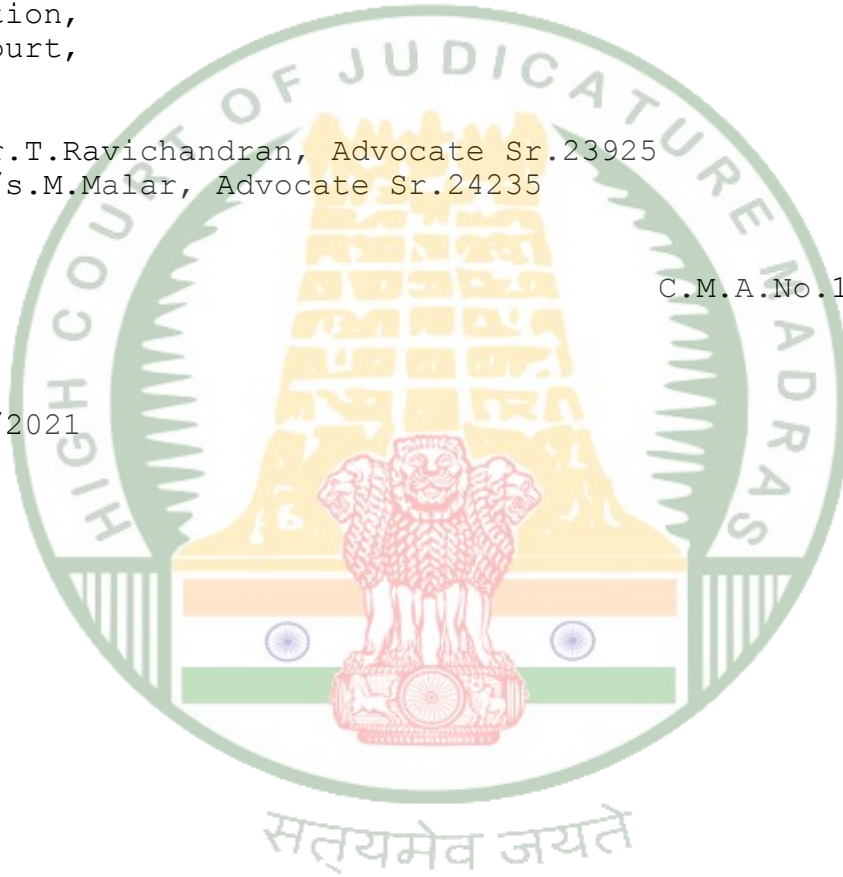
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The Section Officer,  
VR Section,  
High Court,  
Madras.

+1cc to Mr.T.Ravichandran, Advocate Sr.23925  
+1cc to M/s.M.Malar, Advocate Sr.24235

C.M.A.No.1769 of 2013

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