

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.M.A. No. 2083 of 2013

Aaladiyan

.. Appellant

Vs.

1.Annamalai

2.The Branch Manager,  
The Oriental Insurance Co. Ltd.,  
No. 75, Krishnan Street,  
Thiruvannamalai.

.. Respondents

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 09.02.2011, made in M.C.O.P. No. 240 of 2010, on the file of the Additional Sub Court, (Motor Accident Claims Tribunal), Thiruvannamalai.

For Appellant : Ms. A. Subadra

For Respondents : Mr. S. Arun Kumar (for R2)

## **J U D G M E N T**

This appeal has been filed for enhancement of the compensation granted by the award dated 09.02.2011, made in M.C.O.P. No. 240 of 2010, on the file of the Additional Sub Court, (Motor Accident Claims Tribunal), Thiruvannamalai.

2.The appellant-claimant filed M.C.O.P. No. 240 of 2010, on the file of the Additional Sub Court, (Motor Accident Claims Tribunal), Thiruvannamalai, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 11.03.2010.

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 Tractor-Trailer belonging to the 1<sup>st</sup> respondent and directed the 2<sup>nd</sup> respondent as insurer of the vehicle to pay a sum of Rs.89,000/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 09.02.2011, made in M.C.O.P. No. 240 of 2010, the appellant has come out with the present appeal.

5. Learned counsel appearing for the appellant contended that in the accident the appellant sustained fractures of right parasymphysis of mandible, zygomatic complex, right condyle and grievous injuries all over the body and has taken treatment at Thiruvannamalai Government Hospital and Jipmer Hospital at Pondicherry. P.W.2 Doctor assessed the percentage of disability suffered by the appellant as 35%. The Tribunal ought to have adopted multiplier method in awarding compensation towards disability, instead of awarding meagre amount of Rs.70,000/-. At the time of accident, the appellant was running a Beef Stall and was earning a sum of Rs.8,000/- per month. The Tribunal awarded meagre amount towards loss of income. The Tribunal ought to have awarded compensation towards loss of future medical expenses, damage to clothes, mental agony and loss of amenities. The total compensation granted by the Tribunal under other heads meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company contended that the Tribunal considering the fact that the appellant did not suffer any functional disability, rightly applied percentage method in awarding compensation towards disability. In the absence of any material evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.3,000/- per month as notional income of the appellant and awarded compensation towards loss of income, which is not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the 2<sup>nd</sup> respondent and perused the materials available on record.

8.It is the contention of the appellant that in the accident, the appellant suffered fracture and severe injuries all over the body and has taken treatment as inpatient in Jipmer Hospital at Puducherry from 12.03.2010 to 20.03.2010 and subsequently from 25.03.2010 to 30.03.2010, for a period of 13 days. P.W.2 –

Doctor has assessed the percentage of disability suffered by the appellant as 35% and issued disability certificate, marked as Ex.P5. The appellant has not proved that he sustained functional disability due to the injuries sustained in the accident and hence, he is not entitled to compensation by multiplier method. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards transportation, extra nourishment and attendant charges are meagre and hence, the same are enhanced to Rs.5,000/-, Rs.5,000/- and Rs.7,000/- respectively. The Tribunal has not awarded any amount towards loss of amenities. Considering the nature of injuries and the disability suffered, the appellant is entitled to a sum of Rs.10,000/- towards loss of amenities.

9.The appellant has contended that at the time of accident, he was running a Beef Stall and was earning a sum of Rs.8,000/- per month. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.3,000/- per month as notional income. The accident is of the year 2010 and the monthly income fixed by the Tribunal is meagre. Considering the year of accident and the nature of work, this Court fixes a sum of Rs.6,500/- per month as notional income of the appellant. Due to the injuries

sustained in the accident, he would not have worked atleast for a period of 3 months. Hence, a sum of Rs.19,500/- [Rs.6,500/- x 3 months] is awarded towards loss of income for a period of 3 months. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, they 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.    | Disability         | 70,000/-                        | 70,000/-                          | Confirmed                              |
| 2.    | Pain and suffering | 10,000/-                        | 10,000/-                          | Confirmed                              |
| 3.    | Extra nourishment  | 2,000/-                         | 5,000/-                           | Enhanced                               |
| 4.    | Attendant charges  | 2,000/-                         | 7,000/-                           | Enhanced                               |
| 5.    | Transport expenses | 2,000/-                         | 5,000/-                           | Enhanced                               |
| 6.    | Loss of income     | 3,000/-                         | 19,500/-                          | Enhanced                               |
| 7.    | Loss of amenities  | -                               | 10,000/-                          | Granted                                |
|       | <b>Total</b>       | <b>89,000/-</b>                 | <b>1,26,500/-</b>                 | <b>Enhanced by Rs.37,500/-</b>         |

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.89,000/- is enhanced to Rs.1,26,500/- together with interest and costs. The 2<sup>nd</sup> respondent-Insurance Company is directed to

deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 240 of 2010. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.37,500/-. No costs.

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Index : Yes / No  
gsa

To

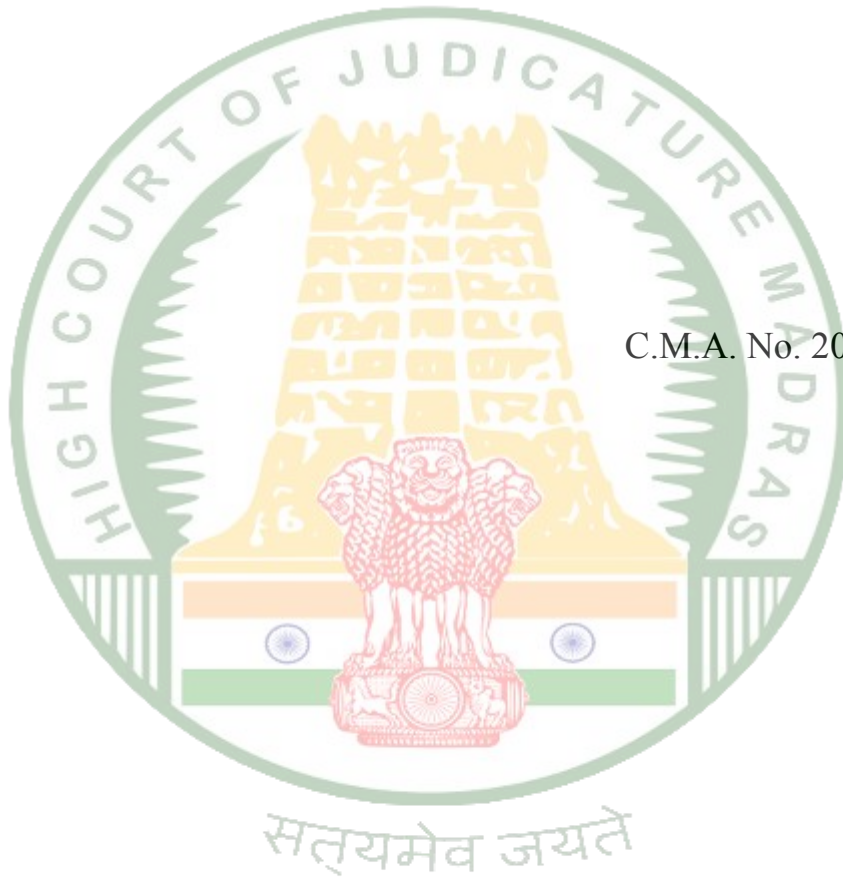
1.The Section Officer,  
V.R Section,  
High Court, Madras.

2.The Additional Subordinate Judge,  
(Motor Accident Claims Tribunal),  
Thiruvannamalai.

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**V.M.VELUMANI, J.,**

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