

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A. No. 1649 of 2016

S.Vijayakumar .. Appellant/ Petitioner

Vs.

1.A.Prabakaran

2. The Branch Manager
United Insurance Company Limited
Divisional Office No.9
Rohit Chambers
5th Floor, Janmbhoomi Marg
Maharashtra. .. Respondents/ Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 22.07.2015, made in M.C.O.P. No. 215 of 2012, on the file of Motor Accidents Claims Tribunal (Special Sub-Court I) Salem.

For Appellant : Mr. R.Nalliyappan
For Respondents : R1-Exparte
Mr.C.Paranthaman (For R2)

J U D G M E N T

The quantum of compensation awarded by the Tribunal is sought to be enhanced by the claimant.

2. The Tribunal awarded a compensation of Rs.2,40,000/- under various heads. The accident occurred on 17.01.2012 at about 20.30 hours at Dharmapuri to Krishnagiri NH-7, Mattlampatty Junction, Opposite to Kuppangkarai Pirivu Road. Karimangalam police station had registered a case in Crime No.27 of 2012 and the appellant filed a claim petition seeking compensation of Rs.10,00,000/-. The Tribunal adjudicated the issue with reference to the documents and evidences produced by the respective parties and as far as the liability is concerned, the Tribunal found that the first

respondent's car had negligently caused the accident. As far as the fixation of compensation is concerned the Tribunal considered the medical records submitted by the appellant / claimant as well as the Exhibit P3, accident register/ wound certificate, which reveals that the appellant/claimant had taken treatment for one day i.e. On 17.01.2012. Thereafter, the appellant /claimant moved to Kamala Hospital, Salem for further treatment. Ex.P12, wound certificate issued by the said Kamala Hospital, shows that the appellant/claimant had sustained fracture of first and second incisors of upper right and left jaws, fracture left humerus and fracture left radius. From Ex.P4, discharge summary, it can be noted that the appellant /claimant had been admitted for treatment as in patient in the same hospital from 17.01.2012 to 20.01.2012. The appellant /claimant undergone surgery and fixed with plate and screws on the left arm. Wound certificate classifies the injury on the left arm and jaws as grievous. PW2, Dr.Shamugapriya, who is a dentist spoke about the dental disability of the petitioner. She opined that the petitioner had lost his upper anterior four teeth and replaced with ceramic crown and bridge work. Considering the medical records including the discharge summary, the Doctor fixed the disability as 30%. PW3, Dr. Arun, who is an Orthopedic Surgeon assessed the disability as 38%. Therefore, the Tribunal has considered these two certificates issued by the two different doctors and arrived the disability at 30%.

3. Learned counsel appearing on behalf of the appellant/claimant mainly contended that it is a permanent disability and the appellant/claimant had undergone surgery and therefore, the Tribunal ought to have considered higher amount of compensation. Contrarily, the Tribunal has not fixed adequate compensation in commensuration with the seriousness of the injury sustained by the appellant / claimant.

4. Learned counsel appearing for the respondent/insurance company opposed the contentions by stating that the Tribunal has rightly fixed the disability as 30%. The doctors examined at Kamala Hospital, Salem, wherein the petitioner had taken treatment subsequently. The treatment was taken at the first instant on 17.01.2012 at Government Hospital, Dharmapuri and thereafter, the appellant continued his treatment in Kamala Hospital, Salem. May that it be.

5. Irrespective of the assessment made by the Doctors, as per the Government of India notification issued by the Ministry of Social Justice, it is possible always opinion differs from one doctor to another doctor regarding the percentage of disability. Under these circumstances, the Tribunal has accepted the disability as 30% in adopting the disability percentage contemplated under the Government of India notification. When there is a difference of opinion between the doctors in the disability certificates given, one regarding the dental disability and another regarding the orthopedic disability, the Tribunal has right in following the Government of India notification issued by the Ministry of social justice. However, the Tribunal has given a finding that the disability has not assessed for the whole body and the respective doctors have assessed the disability based on the injury sustained in a particular part. Considering these factors, the Tribunal has assessed the percentage of disability as 30%. This Court do not find any irregularity in respect of accepting 30% as disability based on the Government of India notification. However, the Tribunal has not granted compensation with reference to the some other heads, for which the claimant is entitled to. Accordingly, the total award of compensation of Rs.2,40,000/- is enhanced as under:-

1. Pain and suffering	Rs. 50,000/-
2. Food and extra nourishment	Rs. 25,000/-
3. For medical expenses	Rs. 83,000/-
4. Transportation	Rs. 20,000/-
5. For loss of personal belongings	Rs. 2,000/-
6. For disability (Rs.3,000/- X 30%)	Rs. 90,000/-
7. Loss of income for 6 months (Rs.4,000X6)	Rs. 24,000/-
8. For attender's charges	Rs. 20,000/-
9. For amenities	Rs. 10,000/-
Total	Rs.3,24,000/-

As far as the awarded amount by the Tribunal is concerned, the said amount was deposited and the appellant had already withdrawn the amount full. The respondent /insurance company is directed to deposit the enhanced award amount along with interest at 7.5% per annum, within a period of six weeks from the date of receipt of a copy of this judgment and on such deposit, the appellant/claimant shall be permitted to withdraw the said amount by filing an appropriate application and the payments are to be made only through RTGS. The respondent/claimant is liable to pay court fee for the enhanced compensation amount.

6. With this modification, the Civil Miscellaneous Appeal stands allowed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

may

To

1.The Special Subordinate Court I,
Motor Vehicle Accident Claims Tribunal
Salem.

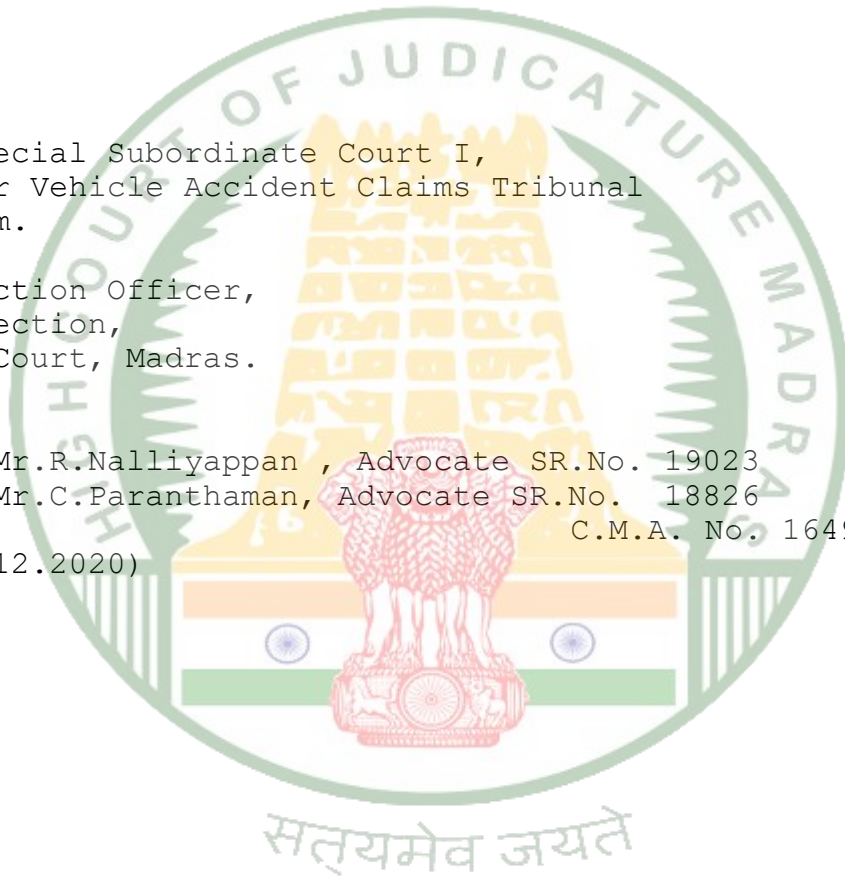
2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.R.Nalliyappan , Advocate SR.No. 19023

+1cc to Mr.C.Paranthaman, Advocate SR.No. 18826

C.M.A. No. 1649 of 2016

A.Sk(22.12.2020)



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