

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2745 of 2013

Durai

.. Appellant /Petitioner

Vs.

1.TVI Crescent College of Education
Somasipadi Pudhur
Thiruvannamalai Taluk and District
(R1 remained exparte before the Tribunal)

2.The Divisional Manager
United India Insurance Co. Ltd.
No.46, Katpadi salai
Vellore.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.06.2011 made in M.C.O.P.No.396 of 2007 on the file of Motor Accident Claims Tribunal, Additional Sub Court, Tiruvannamalai.

For Appellant : Mr.F.Terry Chellaraja

For R2 : Ms.N.Mala

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 30.06.2011 made in M.C.O.P.No.396 of 2007 on the file of Motor Accident Claims Tribunal, Additional Sub Court, Tiruvannamalai.

2.The appellant is claimant in M.C.O.P.No.396 of 2007 on the file of Motor Accident Claims Tribunal, Additional Sub Court, Tiruvannamalai. He filed the 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 06.12.2006.

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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 bus belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said bus to pay a sum of Rs.77,300/- as compensation to the appellant.

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 at the time of accident, the appellant was earning a sum of Rs.10,000/- per month by running a lodge in the name of 'S.A.S.A'. The Tribunal without considering the same, fixed only a meagre sum of Rs.3,000/- as monthly income of the appellant and awarded only a sum of Rs.3,000/- towards loss of income. The appellant suffered fracture of frontal bone with haematoma and multiple injuries all over the body. The appellant examined the doctor as P.W.2, who has assessed the disability of the appellant as 25% and marked the disability certificate as Ex.P12. The appellant has taken treatment as in-patient in Ramana Maharishi Rangammal hospital, from 07.12.2006 to 15.12.2006 and thereafter, in Pondicherry Institute of Medical Sciences, from 22.01.2007 to 25.01.2007. The Tribunal has not awarded any compensation towards damage to clothes and loss of amenities. 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 2nd respondent/Insurance Company contended that the appellant has not produced any document to prove that he was earning a sum of Rs.10,000/- per month. In the absence of any material evidence to prove the income of the appellant, the Tribunal fixed a sum of Rs.3,000/- as monthly income of the appellant and the same is not meagre. The Tribunal after considering all the materials available on record, awarded just compensation. 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 2nd respondent/Insurance Company and perused all the materials available on record.

8.It is the contention of the appellant that at the time of accident, he was earning a sum of Rs.10,000/- per month by running a lodge in the name of 'S.A.S.A'. The appellant failed

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to prove the said contention. 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/- as monthly income of the appellant and awarded a sum of Rs.3,000/- towards loss of income for one month. The accident is of the year 2006 and hence, a sum of Rs.6,000/- is fixed as monthly income of the appellant. Due to the injuries, the appellant would not have attended his work atleast for three months. Thus, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.18,000/- (Rs.6,000/- X 3).

8(i).In the accident, the appellant suffered fracture of frontal bone with haematoma and multiple injuries all over the body. The appellant examined the doctor as P.W.2, who assessed the disability of the appellant as 25% and marked the disability certificate as Ex.P12. The Tribunal accepting the same, awarded a sum of Rs.50,000/- (Rs.2,000/- X 25%) towards disability at the rate of Rs.2,000/- per percentage of disability and the same is in order. According to the appellant, he has taken treatment as in-patient in Ramana Maharishi Rangammal hospital, from 07.12.2006 to 15.12.2006 and thereafter, in Pondicherry Institute of Medical Sciences, from 22.01.2007 to 25.01.2007. The sum of Rs.3,000/-, Rs.2,000/- and Rs.2,000/- awarded by the Tribunal towards transportation, extra nourishment and attendant charges are meagre. Considering the nature of injuries and period of treatment taken by the appellant, the compensation awarded by the Tribunal towards transportation, extra nourishment and attendant charges are hereby enhanced to Rs.5,000/-, Rs.5,000/- and Rs.7,500/- respectively. The Tribunal has not awarded any amount towards damage to clothes and loss of amenities. Considering the nature of injuries suffered by the appellant, Rs.500/- and Rs.5,000/- are awarded towards damage to clothes and loss of amenities respectively. 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.	Disability	50,000	50,000	Confirmed
2.	Loss of income	3,000	18,000	Enhanced

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3.	Transportation	3,000	5,000	Enhanced
4.	Attendant charges	2,000	7,500	Enhanced
5.	Extra nourishment	2,000	5,000	Enhanced
6.	Medical expenses	7,300	7,300	Confirmed
7.	Pain and suffering	10,000	10,000	Confirmed
8.	Damage to clothes	-	500	Granted
9.	Loss of amenities	-	5,000	Granted
	Total	77,300	1,08,300	Enhanced by Rs.31,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.77,300/- is hereby enhanced to Rs.1,08,300/- 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 compensation. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.31,000/- enhanced by this Court as per the order of this Court dated 05.08.2013 in M.P.No.2 of 2013 in C.M.A.SR.No.41740 of 2013. The 2nd 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. 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. No costs.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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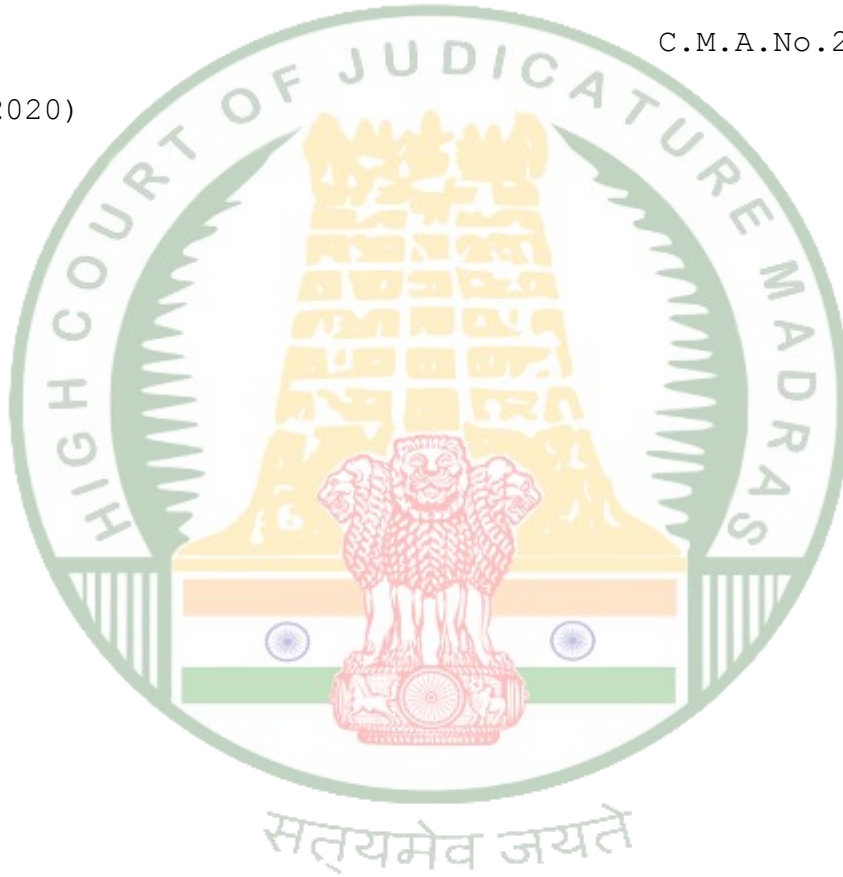
1.The Additional Subordinate Judge
The Motor Accident Claims Tribunal
Tiruvannamalai.

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

+lcc to Mrs.M.Malar, Advocate SR.22945

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