

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 56 of 2015

Boobalan @ Boobalagan .. Appellant/ Petitioner
Vs.

1.K. Tamilarasi
2.R. Suresh
3.The Divisional Manager,
National Insurance Co. Ltd.,
Netaji Road,
Pondicherry. .. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 12.08.2014, made in M.C.O.P. No. 400 of 2006, on the file of the I Additional Sub Court, (Motor Accident Claims Tribunal), Villupuram.

For Appellant : Mr. S. Kalyanaraman

For Respondents: Mr. S. Arunkumar (for R3)

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 12.08.2014, made in M.C.O.P. No. 400 of 2006, on the file of the I Additional Sub Court, (Motor Accident Claims Tribunal), Villupuram.

2.The appellant-claimant filed M.C.O.P. No. 400 of 2006, on the file of the I Additional Sub Court, (Motor Accident Claims Tribunal), Villupuram, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.10.2004.

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 1st respondent and directed the respondents 1 and 2, as owner and 3rd respondent as insurer of the vehicle to jointly and severally pay a sum of Rs.1,11,500/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 12.08.2014, made in M.C.O.P. No. 400 of 2006, the appellant has come out with the present appeal.

5. Learned counsel appearing for the appellant contended that in the accident, the appellant suffered dislocation of clavicle bone and restriction in movement of the shoulder and took treatment as in-patient in Vijaya Hospital, Chennai from 27.01.2004 to 29.10.2004. P.W.2- Doctor has assessed the percentage of disability suffered by the appellant as 40%. At the time of accident, he was a Coolie and was earning a sum of Rs.250/- per day. It took more than 4 to 5 months for the appellant to recover and due to the injuries sustained in the accident, he could not do his work as he was doing earlier. The Tribunal failed to award any amount towards attendant charges, future medical expenses, loss of income and loss of amenities. The amounts granted by the Tribunal under other heads are meagre and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that the appellant has taken treatment only for a period of 3 days. The accident is of the year 2004. In the absence of any material evidence to prove the avocation and income of the appellant and considering the period of treatment taken by the appellant, the Tribunal rightly did not grant any amount towards loss of income. The amount granted by the Tribunal towards attendant charges is not meagre. The total compensation awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7. Heard learned counsel appearing for the appellant as well as the 3rd respondent and perused the materials available on record.

8. It is the contention of the appellant that in the accident, he suffered dislocation of clavicle bone and multiple injuries all over the body and took treatment as in-patient in Vijaya Hospital, Chennai from 27.01.2004 to 29.10.2004. P.W.2- Doctor has assessed the percentage of disability suffered by the appellant as 40%. The appellant has contended that at the time of accident, he was working as a Coolie and was earning a sum of Rs.250/- per day, but he failed to substantiate the same. The accident is of the year 2004. In the absence of any material evidence to prove the avocation and income of the appellant, a sum of Rs.5,000/- per month is fixed as the 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.15,000/- (Rs.5,000/- x 3 months) is awarded towards loss of

income for a period of three months. The amount awarded by the Tribunal towards extra nourishment and attendant charges are meagre. Considering the nature of injuries suffered by the appellant and the period of treatment taken by the appellant, the amount awarded by the Tribunal towards extra nourishment and attendant charges are enhanced to Rs.7,500/- and Rs.2,000/- respectively. The Tribunal has not awarded any amount towards loss of amenities. The appellant has suffered restriction in movement of the shoulder and hence, a sum of Rs.10,000/- is awarded towards loss of amenities. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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/-	80,000/-	Confirmed
2.	Pain and suffering	25,000/-	25,000/-	Confirmed
3.	Extra nourishment	3,000/-	7,500/-	Enhanced
4.	Attendant charges	1,000/-	2,000/-	Enhanced
5.	Transport to Hospital	2,000/-	2,000/-	Confirmed
6.	Loss of amenities	-	10,000/-	Granted
7.	Loss of income	-	15,000/-	Granted
8.	Damages to clothes	500/-	500/-	Confirmed
	Total	1,11,500/-	1,42,000/-	Enhanced by Rs.30,500/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,11,500/- is enhanced to Rs.1,42,000/- along with interest and costs. The respondents are jointly and severally 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. 400 of 2006. 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.30,500/-. No costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

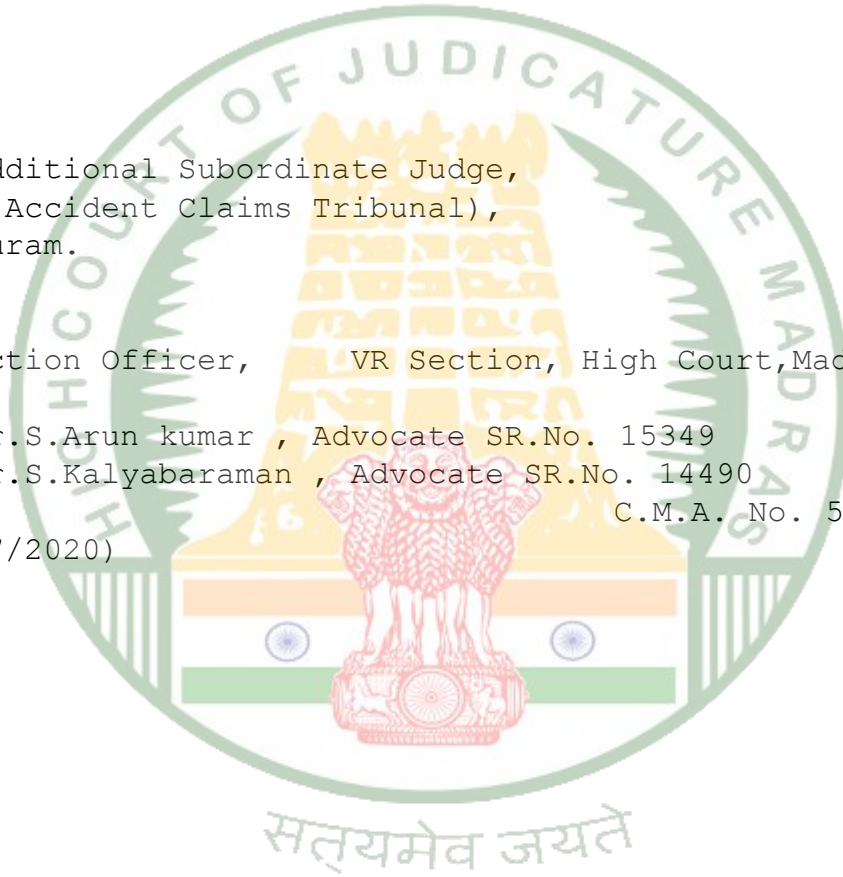
1.The I Additional Subordinate Judge,
(Motor Accident Claims Tribunal),
Villupuram.

Copy to:
The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.S.Arun kumar , Advocate SR.No. 15349
+1cc to Mr.S.Kalyabaraman , Advocate SR.No. 14490

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A.SK(16/07/2020)



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