

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.197 OF 2016

Selvaraj

.. Appellant/Petitioner

Vs.

1. Mani

(R1 set ex-parte before the tribunal)

2. The Manager, Oriental Insurance Company Limited,
Branch Office,
Kumar Complex, 1st floor,
148, West Car Street,
Tiruchengode,
Namakkal District.

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.08.2015 made in M.C.O.P.No.194 of 2012 on the file of the Motor Accident Claims Tribunal Cum Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.C.Kulanthaivel

For R2 : Mr.M.Krishnamoorthy

For R1 : Exparte

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 18.08.2015 made in M.C.O.P.No.194 of 2012 on the file of the Motor Accident Claims Tribunal Cum Chief Judicial Magistrate, Namakkal.

2.The appellant is claimant in M.C.O.P.No.194 of 2012 on the file of the Motor Accident Claims Tribunal Cum Chief Judicial Magistrate, Namakkal. He filed the above claim petition claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.06.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the Lorry belonging to the first respondent and directed both 1st respondent as well as the 2nd respondent/Insurance Company jointly and severally to pay a sum of Rs.9,18,158/- as compensation to the appellant/claimant.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant/claimant has come out with the present appeal for enhancement of compensation.

5.The learned counsel appearing for the appellant contended that P.W.2-Ortho surgeon has assessed the disability of the appellant as 60% and P.W.3-Neuro surgeon has assessed the disability as 52%. The Tribunal, without any reason, reduced the percentage of disability. The appellant has taken first-aid treatment in C.M.Hospital, Namakkal and thereafter he was admitted in KMCH Hospital, Coimbatore for more than 45 days and underwent surgery. The appellant was 38 years at the time of accident and working as supplier of poultry feeds, real estate business and was doing agriculture work and was earning a sum of Rs.15,000/- per month. Due to the disability, he lost his earning capacity. The Tribunal has not awarded any amount towards attendant charges and loss of amenities and future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per Contra, Mr.M.Krishnamoorthy, learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal rightly reduced the disability to 25% as the disability assessed by the Doctor is not for the whole body and awarded a sum of Rs.2,70,000/- towards permanent loss of earning power by the appellant/claimant. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the

appellant/claimant as well as the second respondent and perused the materials available on record.

8. From the pleadings, evidence and award of Tribunal it is seen that the appellant has suffered grievous injury in the accident. P.W.2-Ortho surgeon assessed disability of the appellant at 60% for fracture and P.W.3-Neuro surgeon assessed the disability at 52%. The Tribunal reduced the same to 25% for the whole body and awarded compensation by applying multiplier method. Considering nature of injuries and assessment of disability by two specialist Doctors the disability of the appellant for the whole body is converted at 40%. The appellant contended that he was earning Rs.15,000/- per month by doing Poultry and real estate business as well as agricultural work. He failed to substantiate the said contention. In the absence of material evidence, the Tribunal fixed notional income of the appellant at Rs.6,000/- per month. The accident is of the year 2012. The notional income fixed by the Tribunal is meagre. Considering the date of accident and avocation of the appellant, the notional income is fixed at Rs.8,000/-. The appellant was aged 39 years at the time of accident. The multiplier applicable is '15'. The amounts awarded by the Tribunal for loss of earning power is modified as Rs.5,76,000/- ($\text{Rs.8,000/-} \times 12 \times 15 \times 40/100$). The Tribunal has granted a sum of Rs.24,000/- for partial loss of earning for four months at the rate of Rs.6,000/- per month. The appellant is entitled to a sum of Rs.48,000/- for six months at the rate of Rs.8,000/- per month. The appellant has taken treatment in hospital for more than 45 days as in-patient. The Tribunal has not awarded any amounts towards attendant charges and loss of amenities. Considering the nature of injuries and period of treatment, a sum of Rs.30,000/- & Rs.20,000/- are awarded towards attendant charges & loss of amenities respectively. The Tribunal has awarded a sum of Rs.5,000/- each towards nutrition and pain & suffering which are meagre and the same are enhanced to Rs.25,000/- and Rs.15,000/- respectively. The amounts awarded by the Tribunal under other heads are just and reasonable and hence the same are hereby confirmed.

9. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimant. 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.	Transportation	15,000/-	15,000/-	confirmed
2.	Attendant charges	-	30,000/-	granted
3.	Loss of amenities	-	20,000/-	granted
4.	Nutrition	5,000/-	25,000/-	enhanced
5.	Medical expenses	5,99,158/-	5,99,158/-	confirmed
6.	Pain & suffering	5,000/-	15,000/-	enhanced
7.	Partial loss of earning	24,000/-	48,000/-	enhanced
8.	Permanent loss of earning power	2,70,000/-	5,76,000	enhanced
	Total	Rs.9,18,158/-	Rs.13,28,158/-	enhanced by Rs.4,10,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,18,158/- is hereby enhanced to Rs.13,28,158/-. The appellant is entitled to interest at the rate of 7.5% per annum for the enhanced award amount now determined by this Court. Both the first and second respondent-Insurance Company are jointly and severally directed to deposit the enhanced award amount along with interest and costs now determined by this Court, 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. The appellant is directed to pay necessary Court fee, if any on the amount now enhanced by this Court. No costs.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

gbi

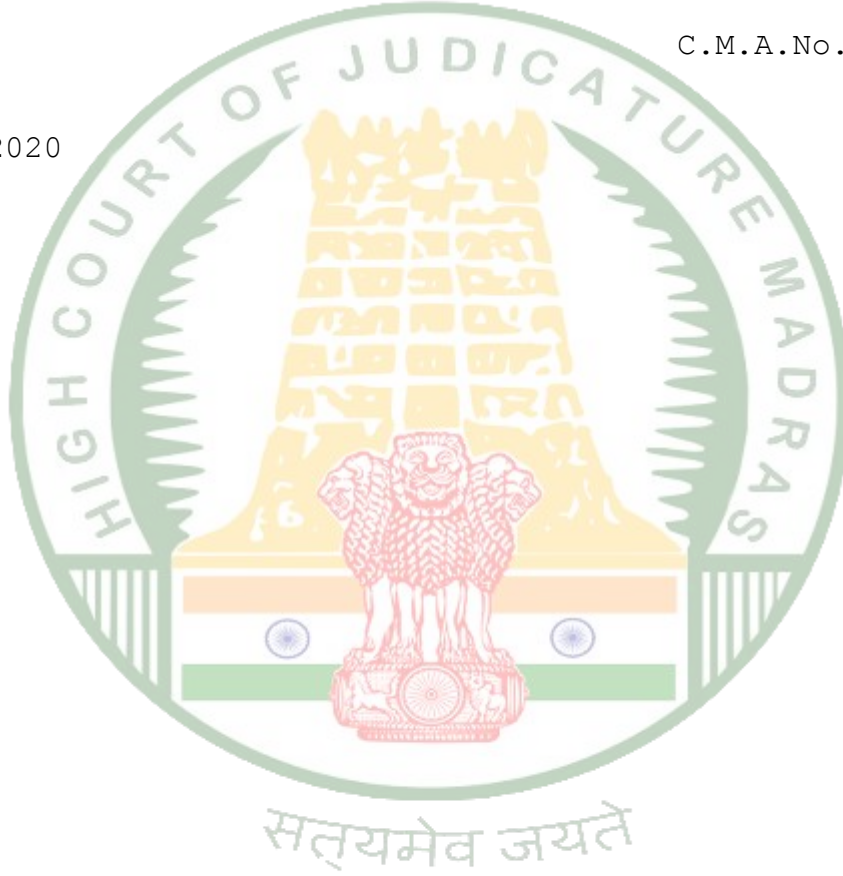
To

1. The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Namakkal.
2. The Section Officer,
V.R.Section, High Court,
Madras.

+lcc to Mr.C.Kulanthaivel, Advocate, S.R.No.12618
+lcc to Mr.M.Krishnamoorthy, Advocate, S.R.No.12541

C.M.A.No.197 of 2016

MP (CO)
CS/02/12/2020



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