

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2121 of 2016

Karthikeyan

.. Appellant/Petitioner

Vs.

1.Natarajan

(1st Respondent remained exparte before the Tribunal)

2.The Manager,

ICICI Lamboard General Insurance
Company Limited,
No.1/T, Chottabai Street,
Nungambakkam,
Chennai 600 006.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.01.2014 made in M.C.O.P.No.21 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Thiruvannamalai.

For Appellant : Ms.A.Subadra for M.Malar

For Respondents : Mrs.R.Sreevidhya for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 21.01.2014 made in M.C.O.P.No.21 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Thiruvannamalai.

2.The appellant is the claimant in M.C.O.P.No.21 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Thiruvannamalai. He filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.11.2010.

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 van belonging to the first respondent, insured with the second respondent and directed both the respondents to jointly and severally pay a sum of Rs.4,74,000/- 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 the appellant sustained severe head injuries and multiple injuries all over the body. The appellant has taken treatment as in-patient in Christian Medical College, Vellore, from 28.11.2010 to 21.12.2010, 22.12.2010 to 04.01.2011, again from 24.04.2011 to 02.05.2011 and underwent surgery on 28.11.2010 & 30.04.2013. The appellant was aged 34 years at the time of accident and was earning a sum of Rs.20,000/- per month by working as a Supervisor. The Tribunal fixed only a meagre sum of Rs.4,500/- as monthly income of the appellant and awarded only a sum of Rs.27,000/- (Rs.4,500 x 6) towards loss of income. Due to the injuries, the appellant suffered 60% disability and he could not continue his work as he was doing earlier. The appellant examined the Doctor as P.W.2 and prove the disability and injuries suffered by him. The amount fixed by the Tribunal per percentage of disability is meagre. The Tribunal has not awarded any compensation towards loss of amenities and mental agony. 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 second respondent/Insurance Company contended that the Tribunal accepted the disability certificate issued by P.W.2/Doctor and granted compensation. In the absence of any evidence to prove the income of the appellant, the Tribunal rightly fixed the monthly income of the appellant at Rs.4,500/- and awarded a sum of Rs.27,000/- (Rs.4,500/- x 6) towards loss of income for a period of six months. 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 second respondent/Insurance Company and perused the entire materials on record.

8.(i). It is the contention of the appellant that in the accident, he sustained severe head injuries, right basifrontal contusion, bifrontal acute subdural haematoma and multiple

injuries all over the body. To substantiate the injuries sustained by him, the appellant examined the Doctor as P.W.2, who has assessed the disability of the appellant as 60% and marked the disability certificate as Ex.P13. The Tribunal accepted the disability assessed by P.W.2/Doctor and awarded a sum of Rs.1,20,000/- (Rs.2,000/- X 60%) towards disability by awarding Rs.2,000/- per percentage of disability. The accident is of the year 2010 and the amount awarded by the Tribunal per percentage of disability is meagre. Hence, a sum of Rs.3,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,80,000/- (Rs.3,000/- X 60%).

8(ii).The appellant has contended that he was working as a Supervisor in a Private Company and was earning a sum of Rs.20,000/- per month at the time of accident. The appellant failed to prove the said contention. In the absence of any evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.4,500/- as monthly income of the appellant. The accident has occurred in the year 2010 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.8,000/- is fixed as monthly income of the appellant. Due to the injuries, the appellant would not have worked atleast for a period of eight months. Thus, the compensation awarded by the Tribunal is enhanced to Rs.64,000/- (Rs.8,000/- x 8).

8(iii). According to the appellant, he has taken treatment as in-patient in Christian Medical College, Vellore, from 28.11.2010 to 21.12.2010, 22.12.2010 to 04.01.2011, again from 24.04.2011 to 02.05.2011 and he underwent surgery on 28.11.2010 & 30.04.2013. The amounts awarded by the Tribunal towards attendant charges, extra nourishment and damage to clothes are meagre and hence, the same are hereby enhanced to Rs.30,000/-, Rs.25,000/- and Rs.2,000/- respectively. The Tribunal has not awarded any compensation towards loss of amenities. Considering the nature of injuries and disability, a sum of Rs.25,000/- is awarded towards loss of amenities. 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	1,20,000/-	1,80,000/-	enhanced
2.	Medical expenses	2,56,000/-	2,56,000/-	confirmed

3.	Loss of income	27,000/-	64,000/-	enhanced
4.	Transportation	20,000/-	20,000/-	confirmed
5.	Attendant charges	10,000/-	30,000/-	enhanced
6.	Extra nourishment	10,000/-	25,000/-	enhanced
7.	Pain & sufferings	30,000/-	30,000/-	confirmed
8.	Damage to clothes	1,000/-	2,000/-	enhanced
9.	Loss of amenities	-	25,000/-	granted
	Total	Rs.4,74,000/-	Rs.6,32,000/-	enhanced by Rs.1,58,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,74,000/- is hereby enhanced to Rs.6,32,000/- 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. The second respondent 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 by making necessary applications before the Tribunal. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar

vkrr

To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Thiruvannamalai.

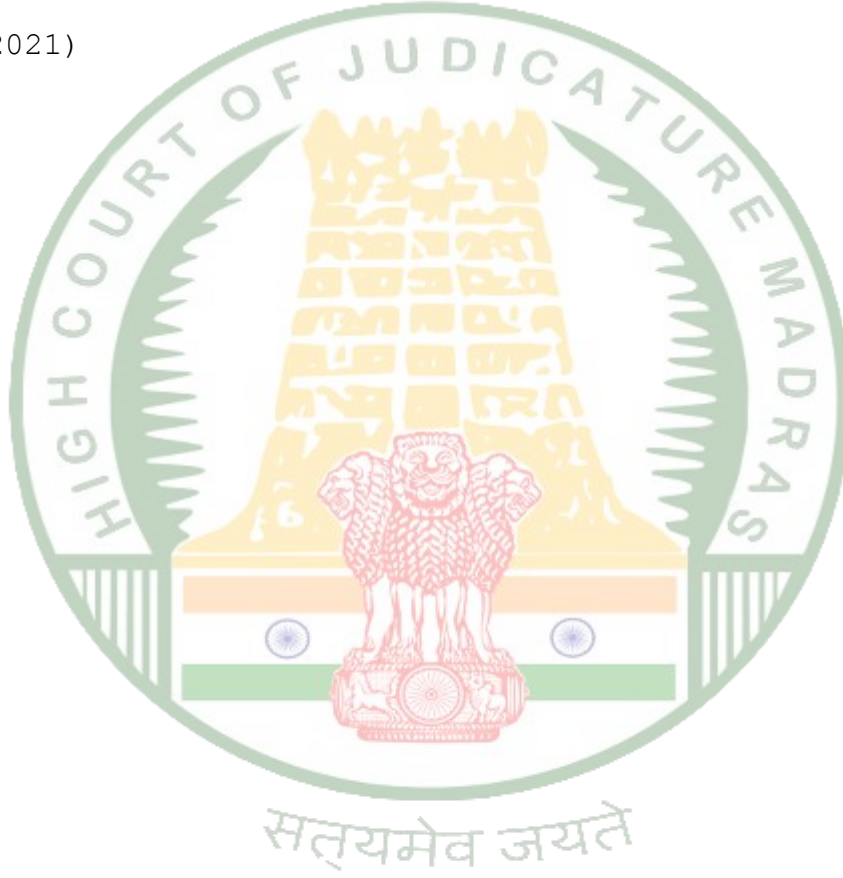
Copy To

The Section Officer,
VR Section,
High Court,
Madras.

+lcc to Mr.M.Malar, Advocate, S.R.No. 16756

C.M.A.No.2121 of 2016

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