

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2810 of 2016

Balasubramanian

... Appellant

Vs.

1.Sivakumar

2.The Branch Manager,
The Oriental Insurance Co. Ltd.,
22-C, Saradha College Road,
Salem – 16.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.04.2016 made in M.C.O.P.No.1558 of 2010 on the file of Motor Accidents Claims Tribunal, Special District Court, Salem.

For Appellant : Mr.R.Nalliyappan

For R2 : Mr.N.Sampath

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 18.04.2016 made in M.C.O.P.No.1558 of 2010 on the file of Motor Accidents Claims Tribunal, Special District Court, Salem.

2.The appellant is claimant in M.C.O.P.No.1558 of 2010 on the file of Motor Accidents Claims Tribunal, Special District Court, Salem. The appellant filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.05.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, owner-cum-driver of the car and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.3,63,280/- 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/claimant contended that the appellant was aged 39 years at the time of accident. In the accident, the appellant sustained clavical cord contusion, quardriparesis, C4 compression fracture (spinal), right tibia with rupture of petella tendon, cervical canal stenosis cord compression. Due to the injuries, the appellant could not able to walk freely and lost his body control and he could not do the work as he was doing earlier. Though P.W.2/Doctor and P.W.4/Doctor assessed the disability of the appellant as 65% and 70% for Ortho and Neuro respectively, the Tribunal ought to have fixed the disability of the appellant as 100% while awarding compensation towards disability. The Tribunal without considering the same, fixed the disability of the appellant as 68%. The amounts awarded by the Tribunal towards extra nourishment, attendant charges and pain & suffering are meagre. The Tribunal has not awarded any amount towards loss of income, transportation charges, loss of amenities and frustration to the life and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the percentage of

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disability fixed by the Tribunal is proper. The Tribunal after considering both oral and documentary evidence in proper perspective, has granted 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 he was aged 39 years at the time of accident. In the accident, he sustained multiple injuries. P.W.2 & P.W.4/Doctors had assessed the disability of the appellant as 65% and 75% for Ortho and Neuro respectively. The Tribunal fixed the disability of the appellant as 68% and awarded a sum of Rs.1,36,000/- (Rs.2,000/- x 68%) towards disability at the rate of Rs.2,000/- per percentage of disability, which is not proper. From the materials available on record, it is seen that the appellant has not proved that he suffered functional disability and therefore, he is not entitled to compensation towards disability by adopting multiplier method. Considering the nature of injuries sustained by the appellant and the

evidence of P.W.2 and P.W.4 / Doctors, the appellant is entitled to compensation for 85% disability at the rate of Rs.3,000/- per percentage of disability. Therefore, a sum of Rs.2,55,000/- (Rs.3,000/- x 85%) is awarded towards disability. The appellant has taken treatment as in-patient in Manipal Hospital, Salem from 27.05.2010 to 29.05.2010 and underwent surgery. Thereafter, he has taken treatment as in-patient in Sri Manakula Vinayagar Medical College hospital from 10.05.2011 to 07.06.2011, subsequently, he has taken treatment in the same hospital from 21.05.2012 to 26.05.2012. The Tribunal has awarded a sum of Rs.10,000/- each towards attendant charges, extra nourishment and pain & suffering, which are meagre. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.20,000/- each is awarded towards attendant charges, extra nourishment and pain & suffering. The Tribunal has not awarded any compensation towards loss of income. The accident is of the year 2010 and hence, a sum of Rs.6,500/- is fixed as monthly income of the appellant. Considering the nature of injuries sustained by the appellant, he would not have attended his work atleast for a period of eight months. Therefore a sum of Rs.52,000/- (Rs.6,500/- x 8) is awarded towards loss of income for eight months. The Tribunal has not awarded any amount towards loss of amenities and hence, a sum of Rs.20,000/- is awarded towards loss of

amenities. The amounts awarded by the Tribunal under all the 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	1,36,000	2,55,000	Enhanced
2.	Attendant charges	10,000	20,000	Enhanced
3.	Extra nourishment	10,000	20,000	Enhanced
4.	Pain & suffering	10,000	20,000	Enhanced
5.	Medical expenses	1,16,400	1,16,400	Confirmed
6.	Medical Expenses (Manipal Hospital)	80,880	80,880	Confirmed
7.	Loss of income	-	52,000	Granted
8.	Loss of amenities	-	20,000	Granted
	Total	Rs.3,63,280/-	Rs.5,84,280/-	Enhanced by Rs.2,21,000/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,63,280/- is hereby enhanced to Rs.5,84,280/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. 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/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

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Index : Yes / No
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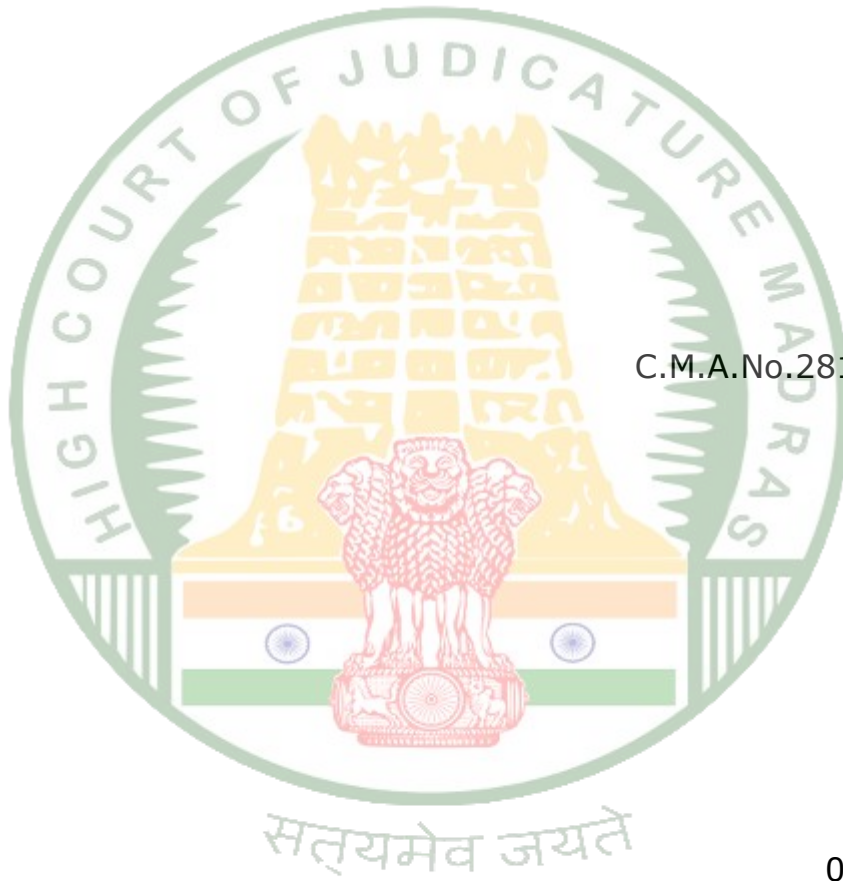
1.The Special District Judge,
The Motor Accident Claims Tribunal
Salem.

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

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V.M.VELUMANI, J.,

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