

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.2448 OF 2019

K.Raja

.. Appellant/Petitioner

Vs.

1.N.Viswanathan

2.Reliance General Insurance Company Ltd.
Sri Lakshmi Complex, 1st floor,
Bharathi street, Omalur main road
Swarnapuri, Salem-636 004.

.. Respondents/Respondents 1 & 2

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 02.03.2018 made in M.C.O.P.No.1396 of 2015 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Salem.

For Appellant : Mr.S.P.Yuvaraj

For R2 : No appearance

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 02.03.2018 made in M.C.O.P.No.1396 of 2015 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Salem.

2.The appellant is claimant in M.C.O.P.No.1396 of 2015 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Salem. He filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the injuries sustained by him in the accident that took place on 03.01.2015.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry

belonging to the 1st respondent and directed the 2nd respondent/ Insurance Company being insurer of the said lorry to pay a sum of Rs.20,25,500/- 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 40 years at the time of accident and was earning a sum of Rs.15,000/- per month by working as agricultural coolie. The Tribunal without considering the same, fixed only a meagre sum of Rs.6,500/- as monthly income of the appellant. Due to the accident, both the legs of the appellant were amputated above knee and therefore, he could not do the work as he was doing earlier. The Tribunal ought to have awarded compensation towards future medical expenses. The amounts awarded by the Tribunal towards pain & suffering and fixing artificial leg are meagre and prayed for enhancement of compensation.

6. Though notice has been served on the 2nd respondent/ Insurance Company and their name is printed in the cause list, there is no representation on behalf of the 2nd respondent either in person or through counsel.

7. Heard the learned counsel appearing for the appellant and perused all the materials available on record.

8. It is the contention of the appellant that he was aged 40 years at the time of accident and was earning a sum of Rs.15,000/- per month by working as agricultural coolie. The appellant failed 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.6,500/- as monthly income of the appellant. The Tribunal awarded 25% enhancement towards future prospects, applied multiplier 14 and awarded a sum of Rs.13,65,000/- (Rs.6,500/- + 1625 [Rs.6,500/- X 25%] X 12 X 14) towards disability. The accident is of the year 2015 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.9,000/- is fixed as monthly income of the appellant. Thus, the amount awarded towards disability is enhanced to Rs.18,90,000/- (Rs.9,000/- + 2250 [Rs.9,000/- X 25%] X 12 X 14).

9. According to the appellant, he has taken treatment as in-patient in Government hospital, Salem, from 03.01.2015 to 02.03.2015 and his both legs were amputated. The sum of Rs.10,000/-, Rs.20,000/-, Rs.30,000/- and Rs.500/- awarded by the Tribunal towards transportation, extra nourishment, attendant charges and damage to clothes respectively are meagre.

Considering the fact that both the legs of the appellant are amputated and period of treatment taken by him, the amounts awarded by the Tribunal towards transportation, extra nourishment, attendant charges and damage to clothes are enhanced to Rs.25,000/-, Rs.50,000/-, Rs.60,000/- and Rs.5,000/- respectively. The appellant has not produced any document to prove that he is continuing treatment and therefore, he is not entitled to any compensation towards future medical expenses. The amounts awarded by the Tribunal under all the other heads are just and reasonable and hence, the same are hereby confirmed.

10.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation, more than the amount claimed by the claimants. 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	13,65,000	18,90,000	Enhanced
2.	Pain and suffering	2,00,000	2,00,000	Confirmed
3.	Loss of amenities	2,00,000	2,00,000	Confirmed
4.	Fixing artificial leg	2,00,000	2,00,000	Confirmed
5.	Transportation	10,000	25,000	Enhanced
6.	Extra nourishment	20,000	50,000	Enhanced
7.	Attendant charges	30,000	60,000	Enhanced
8.	Damage to clothes	500	5,000	Enhanced
	Total	20,25,500	26,30,000	Enhanced by Rs.6,04,500/-

11.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.20,25,500/- is hereby enhanced to Rs.26,30,000/- 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.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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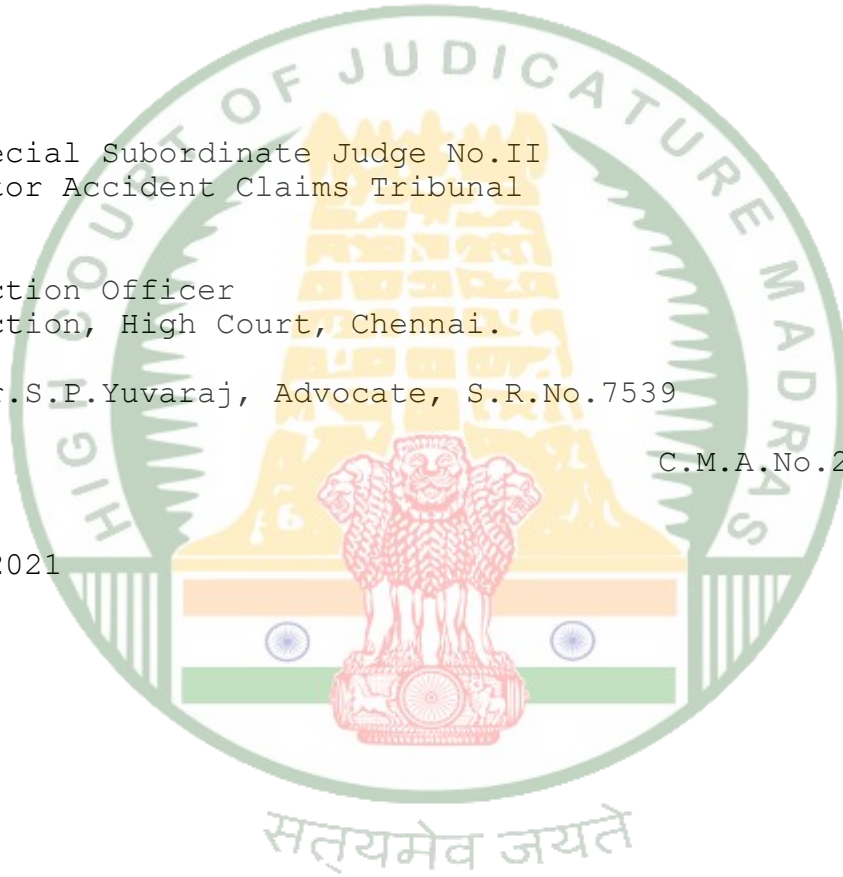
To

1. The Special Subordinate Judge No.II
The Motor Accident Claims Tribunal
Salem.
2. The Section Officer
V.R.Section, High Court, Chennai.

+lcc to Mr.S.P.Yuvaraj, Advocate, S.R.No.7539

C.M.A.No.2448 of 2019

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CS/29/01/2021



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