

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-03-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.858 of 2016

M.Kandasamy .. Appellant/Petitioner

vs.

1.M.Arumugam

2.M/s.National Insurance Co. Limited,
LRN Colony, Sarada College Main Road,
Hasthampatty,
Salem-7. ... Respondents/Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 26.11.2013 passed in M.C.O.P.No.2262 of 2010 on the file of the learned Special Sub-Judge-I, Special Sub Court No.I-cum-Motor Accidents Claims Tribunal, Salem.

For Appellant : Mr.T.Ananthasekar

For Respondent-1 : Ex Parte in the Lower Court

For Respondent-2 : Mr.J.Chandran

J U D G M E N T

The present Civil Miscellaneous Appeal is filed against the judgment and decree passed by the learned Special Sub-Judge-I, Special Sub Court No.I-cum-Motor Accidents Claims Tribunal, Salem in M.C.O.P.No.2262 of 2010.

2. The claimant filed the present Civil Miscellaneous Appeal, seeking an enhancement of compensation. Admittedly, the accident occurred on 01.09.2010 at about 17.45 hours in between Nasiyanoor and Erode Main Road near Venkateswara Rice Mill and the existence of policy is also admitted by the second respondent/Insurance Company.

3. The main ground raised is regarding the quantum of compensation, the learned counsel appearing on behalf of the appellant mainly contended that the fixation of disability is lesser than that of the actual disability and further the amount of total compensation is also lesser than that and that is to be granted fairly in favour of the appellant.

4. Perusal of the findings of the Tribunal reveals that PW-2 Doctor Rajamanickam Orthopedic Surgeon. After examining the nature of injuries sustained by the petitioner, he had opined that there is mal-union of rib bone which would cause difficulty in walking fast and carrying weight. The Doctor would assess 30% permanent disability. In support of his Report, the Doctor, had filed Ex.X-2, disability certificate, and Ex.X-1, X-Rays. Further, the petitioner had examined PW-3 Doctor Mariappan, a General Physician. He had opined that the injury on the skull would cause frequent giddiness, head ache and loss of memory. He would opine due to the above problems the petitioner would face a permanent disability of 45%. In support of his Report, the Doctor had filed Ex.X-5, disability certificate and Ex.X-6, X-Ray.

5. Considering the abovesaid Doctors evidence, the Tribunal arrived a conclusion that the percentage of disability given by both the Doctors are exaggerated. The Doctors instead of calculating the disability for the whole body, had independently calculated for each part. Thus, such assessments cannot be taken into consideration and under those circumstances, the Tribunal arrived a conclusion that the percentage of disability would be 30% and accordingly, granted compensation for the disability at Rs.60,000/-.

6. This Court is of the considered opinion that as far as the disability of 30% granted by the Tribunal is concerned, this Court do not find any perversity or infirmity. However, the grant of Rs.2,000/- per percentage is the lesser amount and the same has to be enhanced as Rs.3,000/- per percentage. Accordingly, provided the compensation for the disability would be Rs.90,000/-. In respect of all other heads, this Court is not inclined to enhance as the same are adequate and just.

7. Thus, this Court is inclined to enhance the compensation under the Head of Disability and Rs.3,000/- per percentage is fixed. Thus, the amount of compensation of Rs.60,000/- granted for disability is enhanced to Rs.90,000/-. Thus, the total compensation is enhanced to Rs.2,05,000/-.

8. Thus, the judgment and decree passed by the Tribunal in MCOP No.2262 of 2010 dated 26.11.2013 is modified and the enhanced compensation of Rs.2,05,000/- is awarded as per the details given below:-

	Rs.	
Pain and Sufferings		20,000/-
Loss of income during treatment (Rs.5,000/-x6)		30,000/-
Food and Extra Nourishment		5,000/-
Medical Expenses		3,000/-
Transportation		5,500/-
For Disability		90,000/-
Loss towards personal belongings		1,500/-
Loss of earning capacity		50,000/-

		2,05,000/-
		=====

9. It is brought to the notice of this Court by the learned counsel appearing on behalf of the second respondent/Insurance Company that the award amount had already been deposited and the appellant also had withdrawn the said amount. Thus, the second respondent/Insurance Company is directed to deposit the enhanced amount with accrued interest at the rate of 7.5% per annum, within a period of six weeks from the date of receipt of a copy of this judgment and on such deposit, the appellant/claimant is permitted to withdraw the said amount with interest by filing an appropriate application and the payments are to be made only through RTGS. The appellant/claimant is liable to pay the additional court fee for the enhanced compensation.

10. Accordingly, C.M.A. No.858 of 2016 stands allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

Svn

To

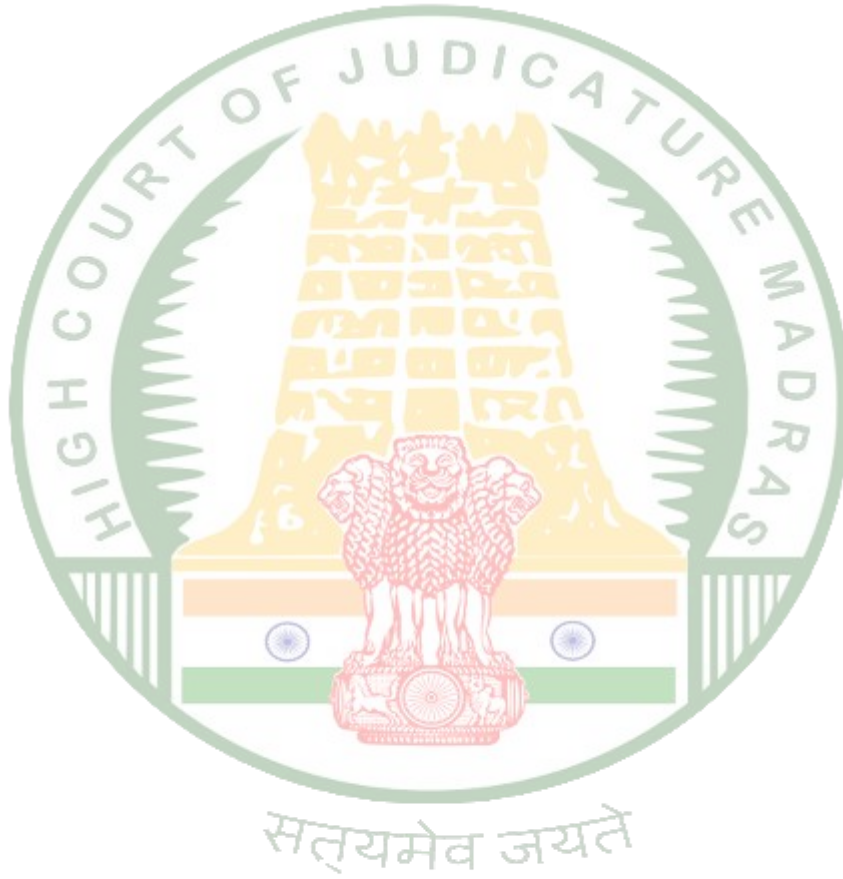
The Special Sub Judge No.I,
Special Sub Court No.I-cum-
The Motor Accidents Claims Tribunal,
Salem.

1 cc to Mr.T. Ananthasekar, SR. 19855

1 cc to Mr.J. Chandran, Advocate, Sr. 19325

CMA No.858 of 2016

KJ (CO)
kk 7/1



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