

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2299 of 2014

Senthilvel

...Appellant

Vs.

1.J.Kanaga

2.The New India Assurance Company Ltd.,
No.7, Ramalinga Madalaya Street,
Gugai, Salem 636 006.
having Third Party Cell at No.69/70,
Sheikpet Nadu Street,
Kancheepuram.

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order dated 21.04.2014 passed in M.C.O.P.No.142 of 2003 by the learned Subordinate Judge, Motor Accidents Claim Tribunal, Madurantakam.

For Appellant : Mr.S.S.Swaminathan

For Respondents: Mr.M.Krishnamoorthy for R2

: R1 Notice Served - No appearance

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant seeking enhancement of compensation granted by the Tribunal in the award dated 21.04.2014 made in M.C.O.P.No.142 of 2003 on the file of Motor Accident Claims Tribunal, learned Subordinate Judge, Madurantakam.

2.The appellant is the claimant in M.C.O.P.No.142 of 2003 on the file of Motor Accident Claims Tribunal, learned Subordinate Judge, Madurantakam. He 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 13.06.2003.

3.The case of the appellant is that on 13.06.2003, at about 12.00 hours, the appellant was driving his Hero Honda Motor Cycle bearing Registration No.TN23Q7749, from southern side to northern side on the Tailor's Road, near Pleasant Apartments, with his colleague. The vehicle was driven carefully and diligently at a moderate speed, on the proper side of the road. At that time, the first respondent's Zeep bearing Registration No.TN27E0369, came on the wrong side by crossing the dividing line on the road with high speed and also in a zig zag manner, dashed against the petitioner. Thereby, the appellant and his friend sustained grievous injuries. Both of them were taken to KMC, Chengalpattu for first aid and then on the same day, he was taken to Appollo first Med Hospitals, Chennai.

4.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 first respondent's Zeep and directed the second respondent-Insurance Company, on behalf of the first respondent, to pay a sum of Rs.5,73,129/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.Heard Mr.S.S.Swaminathan, learned counsel for the appellant and Mr.M.Krishnamoorthy, learned counsel for the second respondent and perused the materials available on record.

6.A perusal of the records shows that the claimant has sustained fractures and injuries all over the body. P.W.2 and P.W.3 have assessed the partial permanent disability as 60% and the Tribunal has reduced the same to 40% and awarded a sum of Rs.80,000/- (Rs.2,000/- per percentage) towards "disability". Considering the nature of the injuries sustained by the appellant, this Court is inclined to enhance the percentage of disability to Rs.3,000, which comes to Rs.1,20,000/- (Rs.3,000/- X 40%). It is seen from the claim petition that the claimant was working as a Marketing Executive in Metal Building Company and earning a sum of Rs.9,500/- per month. The learned counsel for the appellant/claimant could not let in any proper evidence regarding the nature of work done by the appellant and hence, the Tribunal has fixed Rs.8,000/-. Taking into account the period of treatment, the tribunal awarded a sum of Rs.4,000/- towards "loss of income", which is very meager. This Court is of the opinion that the appellant could not be able to work for a period of about four months and considering the nature of injuries sustained by the appellant, this Court is

inclined to enhance the same to a sum of Rs.6,000/- per month and awards Rs.24,000/- (Rs.6,000/- X 4 months). The Court below has awarded a sum of Rs.15,000/- towards "pain and sufferings" and the same is hereby enhanced to Rs.30,000/- The Tribunal has awarded a sum of Rs.4,52,229/- towards "medical expenses". The medical bills for the same has also been shown as Ex.P5. Hence, this Court is of the view that the amount awarded towards medical expenses is appropriate and the same is confirmed hereby. The Tribunal has not awarded any amount towards "damages & loss of amenities" and "attender charges". Considering the facts and circumstances, this Court awards a sum of Rs.10,000/- and Rs.5,000/- respectively. The amounts awarded by the Tribunal under other heads are just and reasonable and are confirmed hereby. The award passed by this Court under various heads is extracted hereunder:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	80,000/-	1,20,000/-	enhanced
2.	Pain and Sufferings	15,000/-	30,000/-	enhanced
3.	Transportation	16,900/-	16,900/-	confirmed
4.	Nutrition	5,000/-	5,000/-	confirmed
5.	Medical Expenses	4,52,229/-	4,52,229/-	confirmed
6.	Damages & Loss of Amenities	---	10,000/-	awarded
7.	Attender Charges	---	5,000/-	awarded
8.	Loss of Income	4,000/-	24,000/-	enhanced
	Total	5,73,129/-	6,63,129/-	enhanced by Rs.90,000/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,73,129/- is hereby enhanced to Rs.6,63,129/- 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 second respondent-Insurance Company, on behalf of the first 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/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount already withdrawn, if any. No costs.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

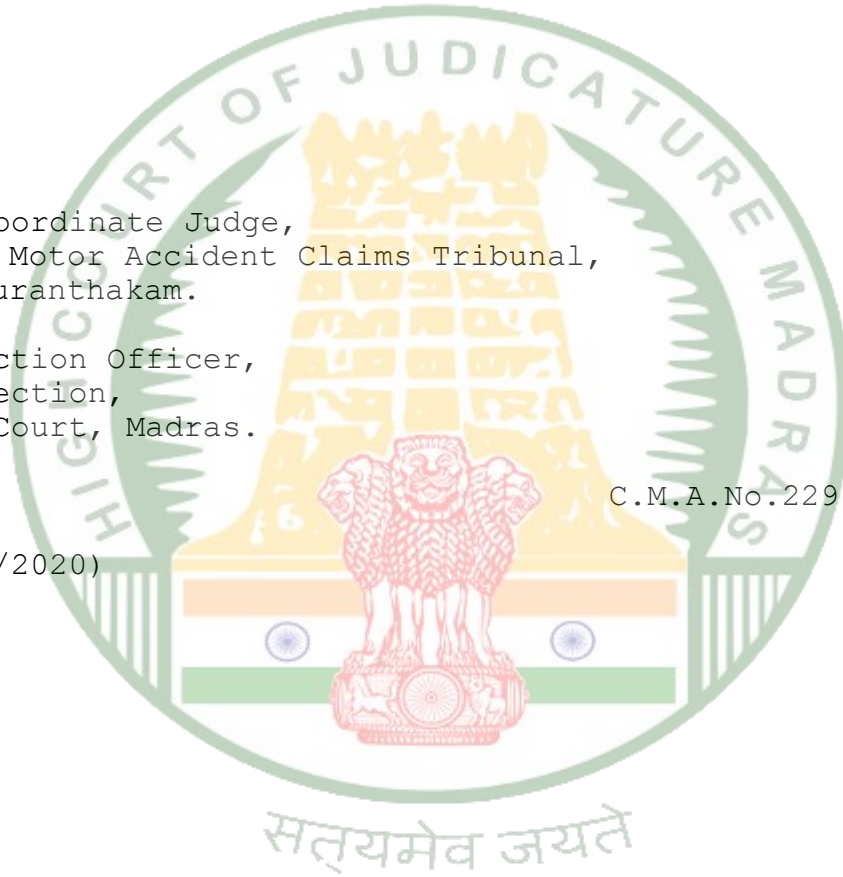
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To

- 1.The Subordinate Judge,
The Motor Accident Claims Tribunal,
Maduranthakam.
- 2.The Section Officer,
V.R Section,
High Court, Madras.

KS (CO)
CB(28/08/2020)

C.M.A.No.2299 of 2014



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