

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2483 of 2014

K.Saravanan

.. Appellant

Vs.

1.R.Balaji

2.The Branch Manager,
United India Insurance Company Limited,
No.17, C.P.R. Street, Post Box No.62,
Amrapuram, Gudiyatham, Vellore District.

3.M.Lingadharan

4.The Branch Manager,
United India Insurance Company Limited,
K.B.S.Motors Buildings, No.36, Katpadi Road,
Gandhi Nagar, Vellore – 612 006.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.11.2010 made in M.C.O.P.No.1266 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishangiri.

For Appellant	: Ms.K.Prasanna for Mr.Mukund R.Pandiyan
For RR 1 & 3	: No appearance
For RR 2 & 4	: Ms.I.Malar

JUDGMENT

The matter is heard through “Video Conferencing”.

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 11.11.2010 made in M.C.O.P.No.1266 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishangiri.

3.The appellant is the claimant in M.C.O.P.No.1266 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishangiri. He filed the above said claim petition, claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 17.08.2004.

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 bus belonging to the 1st respondent and directed the 2nd respondent to pay a sum of Rs.1,99,675/- as compensation to the appellant.

5. Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6. The learned counsel appearing for the appellant contended that in the accident the appellant sustained grievous injuries all over the body and P.W.2/Doctor examined the appellant and certified that appellant suffered 50% disability and issued Ex.P9/disability certificate to that effect. The Tribunal without giving any valid reason, reduced the percentage of disability to 45% and awarded compensation only for 45% of disability. The Tribunal ought to have awarded compensation for 50% of disability. The appellant was working as Goldsmith and was earning a sum of Rs.7,000/- per month. Due to the injuries sustained by the appellant, he could not do the work as he was doing earlier. The Tribunal ought to have adopted multiplier method and awarded compensation towards loss of earning capacity. The amounts awarded by the Tribunal towards pain and sufferings, extra nourishment are meagre. The appellant has taken treatment as inpatient from 17.08.2004 to 30.08.2004 and Tribunal has not awarded any amount towards mental agony and loss of amenities. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation.

7.The learned counsel appearing for the respondents 2 and 4 contended that the Tribunal reduced the percentage of disability from 50% to 45% on the ground that P.W.2/Doctor is not the doctor who treated the appellant and that he has examined the appellant only after five years from the date of accident. Hence, the appellant is not entitled to compensation for 50% disability. She further contended that the Tribunal has awarded a sum of Rs.2,000/- per percentage for 45% of disability, which is highly excessive. Therefore, the appellant is not entitled to any enhancement towards disability. The appellant has not produced any material evidence to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the appellant and awarded compensation towards loss of income for three months, which is excessive. The appellant has not suffered any functional disability and hence, he is not entitled to compensation towards loss of earning capacity by adopting multiplier method. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

8.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation either in person or through

counsel.

9.Though the 3rd respondent entered appearance through counsel, at the time of hearing, there was no representation on behalf of the 3rd respondent.

10.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 2 & 4 and perused the entire materials on record.

11.From the materials available on record, it is seen that it is the contention of the appellant that in the accident he sustained grievous injuries all over the body. To prove the same, the appellant examined himself as P.W.1 and P.W.2/Doctor. P.W.2/Doctor examined the appellant and certified that appellant suffered 50% disability and issued Ex.P9/disability certificate to that effect. The Tribunal reduced the percentage of disability from 50% to 45% and awarded compensation only for 45% of disability on the ground that P.W.2/Doctor is not the doctor who treated the appellant and also that he has examined the appellant only after five years from the date of accident. The respondents have not let in any contra evidence to disprove the evidence of P.W.2/Doctor and Ex.P9/disability certificate. Hence, the appellant is entitled

to compensation for 50% disability. However, from the award passed by the Tribunal it is seen that the Tribunal has awarded a sum of Rs.90,000/- for 45% disability at the rate of Rs.2,000/- per percentage of disability. The accident occurred in the year 2004 and a sum of Rs.2,000/- per percentage of disability awarded by the Tribunal is excessive. Hence, the appellant is not entitled to any enhancement for disability. The appellant has not proved that he suffered functional disability and lost his earning capacity. Hence, he is not entitled to compensation towards loss of earning capacity by adopting multiplier method.

12.From the materials on record, it is seen that the appellant has taken treatment as inpatient from 17.08.2004 to 30.08.2004. The Tribunal has awarded a meagre sum of Rs.2,000/- towards attendant charges and extra nourishment and hence the same is enhanced to Rs.10,000/-. The Tribunal has not awarded any amount towards loss of amenities and damages to clothes. Considering the nature of injuries and disability suffered by the appellant, a sum of Rs.10,000/- is awarded towards loss of amenities and Rs.1,000/- towards damages to clothes. It is the contention of the appellant that he was working as Goldsmith and was earning a sum of Rs.7,000/- per month. He failed to prove the said contention. In the absence of any material evidence

with regard to avocation and income, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the appellant and awarded a sum of Rs.13,500/- towards loss of income for three months and the same is not meagre. The amounts awarded by the Tribunal towards pain and sufferings, medical expenses and transportation 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
1.	Disability	90,000/-	90,000/-	Confirmed
2.	Pain and sufferings	20,000/-	20,000/-	Confirmed
3.	Loss of income	13,500/-	13,500/-	Confirmed
4.	Medical expenses	68,625/-	68,625/-	Confirmed
5.	Attendant charges and Extra nourishment	2,000/-	10,000/-	Enhanced
6.	Transportation	5,550/-	5,550/-	Confirmed
7.	Damages to clothes	-	1,000/-	Granted
8.	Loss of amenities	-	10,000/-	Granted
	Total	Rs.1,99,675/-	Rs.2,18,675/-	Enhanced by Rs.19,000/-

13.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,99,675/- is hereby enhanced to Rs.2,18,675/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent is

directed to deposit the 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, to the credit of M.C.O.P.No.1266 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. It is made clear that the appellant is not entitled to any interest for the delay period on the amount of Rs.19,000/-, enhanced by this Court, as per the order of this Court dated 22.08.2014 made in M.P.No.1 of 2013 in C.M.A.No.SR.73379 of 2013. No costs.

21.12.2020

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Index : Yes / No

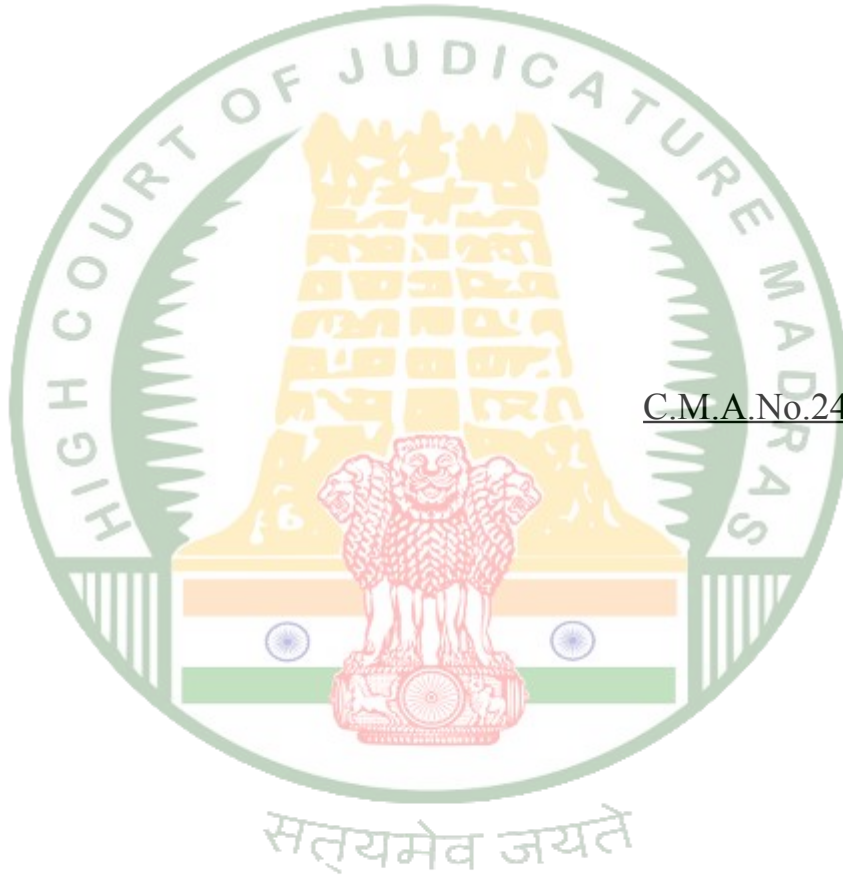
Internet : Yes / No

To

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

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

V.M.VELUMANI, J.
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