

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 382 of 2014

Mani .. Appellant/ Petitioner
Vs.

1.District Collector, (Exonerated)
Collectorate,
Vellore.

2.Regional Joint Director, (Exonerated)
Animal Husbandry,
Vellore.

3.Balu

4.Manikanndan

5.Divisional Manager,
The New India Assurance Co. Ltd.,
No. 1, Officers Line,
Vellore.

6.District Collector,
Collectorate,
Thiruvannamalai.

7.Regional Joint Director,
Animal Husbandry,
Thiruvannamalai.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 02.12.2009, made in M.C.O.P. No. 577 of 2002, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Thiruvannamalai.

For Appellant : Mr. F. Terry Chella raja

For Respondents: Mr. Y.T. Aravind Gosh (For RR6 & 7)
Government Advocate (CS)
R1 to R5 Not Ready in Notice

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 02.12.2009, made in M.C.O.P. No. 577 of 2002, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Thiruvannamalai.

2.The appellant-claimant filed M.C.O.P. No. 577 of 2002, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Thiruvannamalai, claiming a sum of Rs.1,00,000/- as compensation for the injuries sustained by him in the accident that took place on 03.11.2001.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 3rd respondent, driver of the Jeep belonging to the 7th respondent and directed the 7th respondent to pay a sum of Rs.32,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 02.12.2009, made in M.C.O.P. No. 577 of 2002, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended that in the accident, the appellant sustained multiple fractures of left below knee, neck of fibula and tibia and grievous injuries all over the body. P.W.2 - Doctor assessed that the appellant suffered 55% permanent disability. The Tribunal without considering the same, has not awarded any amount towards damage to clothes, attendant charges, future medical expenses, mental agony and loss of amenities. The Tribunal considering the nature of injuries, ought to have awarded compensation separately towards extra nourishment and transport expenses. At the time of accident, the appellant was doing Business and was earning a sum of Rs.3,000/- per month. The Tribunal fixed a meagre sum of Rs.800/- per month as notional income. The Tribunal ought to have granted compensation towards loss of earning capacity as 100%. In any event, the total compensation granted by the Tribunal under different heads are meagre and prayed for enhancement of the same.

6.Per contra, the learned Government Advocate appearing for the respondents 6 and 7 contended that the Tribunal in the absence of any material evidence to prove the avocation and income of the appellant, fixed a sum of Rs.800/- per month as notional income, which is not meagre. The Tribunal considering all the materials on record in proper perspective, awarded compensation, which is not meagre. The appellant has not made

out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7. Heard learned counsel appearing for the appellant as well as the learned Government Advocate appearing for the respondents 6 & 7 and perused the materials available on record.

8. It is the contention of the appellant that at the time of accident, he was doing Business and was earning a sum of Rs.3,000/- per month. He has failed to prove the same. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal has fixed a sum of Rs.800/- per month as notional income of the appellant. The accident is of the year 2001 and the monthly income fixed by the Tribunal is meagre. Considering the year of accident and the nature of work, this Court fixes a sum of Rs.1,500/- per month as notional income of the appellant. In the accident, the appellant suffered multiple fractures and grievous injuries all over the body. It is evident from Ex.P4- discharge summary that the appellant has taken treatment as in-patient in Government General Hospital, Thiruvannamalai, from 04.11.2001 to 04.12.2001, for a period of 31 days and has undergone surgery on 26.11.2001. P.W.2- Doctor has examined and assessed the percentage of disability suffered by the appellant as 55%. The respondents did not let in any evidence to disprove the evidence of P.W.2 - Doctor and disability certificate marked as Ex.P6. Hence, as per II Schedule of Section 163-A of the Motor Vehicles Act, 1988, the amount awarded by the Tribunal towards disability is enhanced to Rs.49,500/- ($\text{Rs.1,500/-} \times 12 \times 5 \times 55\%$). The Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the period of treatment taken and the nature of injuries suffered by the appellant, this Court awards a sum of Rs.6,200/- towards attendant charges and Rs.10,000/- towards loss of amenities. The consolidated sum of Rs.3,000/- awarded by the Tribunal towards transportation expenses, medical expenses and extra nourishment is meagre and hence, the same is enhanced to Rs.10,000/-. The amount awarded by the Tribunal towards pain and suffering is just and reasonable and hence, the same is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

WEB COPY

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	26,400/-	49,500/-	Enhanced
2.	Pain and suffering	2,600/-	2,600/-	Confirmed
3.	Transportation, Extra nourishment, medical expenses, etc.,	3,000/-	10,000/-	Enhanced
4.	Attendant charges	-	6,200/-	Granted
5.	Loss of amenities	-	10,000/-	Granted
	Total	32,000/-	78,300/-	Enhanced by Rs.46,300/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.32,000/- is enhanced to Rs.78,300/- along with interest and costs. The 7th respondent is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 577 of 2012. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.46,300/-. No costs.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Principal Subordinate Judge,
(Motor Accident Claims Tribunal),
Thiruvannamalai.

2.The District Collector,
Collectorate,
Thiruvannamalai.

3.The Regional Joint Director,
Animal Husbandry,
Thiruvannamalai.

Copy to:

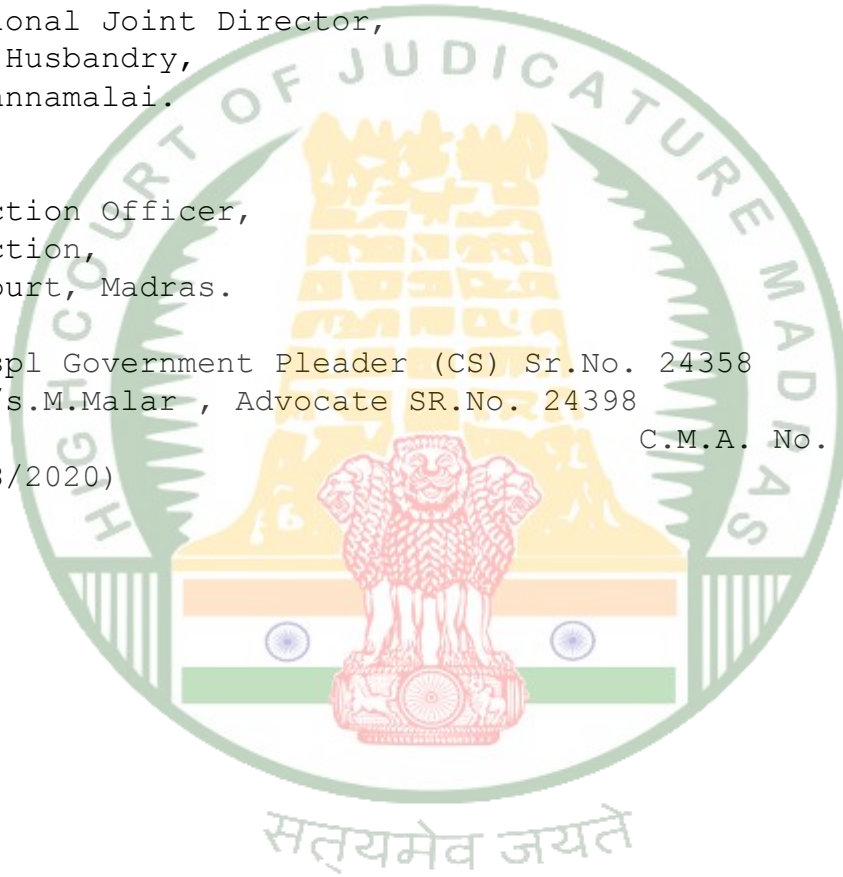
The Section Officer,
V.R Section,
High Court, Madras.

+1 cc to spl Government Pleader (CS) Sr.No. 24358

+1cc to M/s.M.Malar , Advocate SR.No. 24398

C.M.A. No. 382 of 2014

A.SK(21/08/2020)



WEB COPY