

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.688 of 2014

Chandrasekar .. Appellant /Petitioner

Vs.

1.Sulaiman

2.The Divisional Manager,
National Insurance Company Limited,
No.19, Officers Line,
Vellore.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.10.2009 made in M.C.O.P.No.213 of 2006 on the file of the Motor Accident Claims Tribunal, Principal Sub-Court, Thiruvannamalai.

For Appellant : Mr.F.Terry Chella Raja

For R2 : Mrs.R.Sree Vidhya

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 12.10.2009 made in M.C.O.P.No.213 of 2006 on the file of the Motor Accident Claims Tribunal, Principal Sub-Court, Thiruvannamalai.

2.The appellant is the claimant in M.C.O.P.No.213 of 2006 on the file of the Motor Accident Claims Tribunal, Principal Sub-Court, Thiruvannamalai. 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 14.05.2005.

3.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 auto belonging to 1st respondent and directed both 1st respondent as well as the

2nd respondent/Insurance Company, being the insurer of the said auto to jointly and severally pay a sum of Rs.1,99,000/- 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 contended that in the accident, the appellant sustained severe head injuries and grievous injuries all over the body. Several surgeries were conducted to rectify the injuries caused to the blood vessels. The appellant had completely lost his speech and incapable of expressing his intentions by way of speech. P.W.2/Doctor examined the appellant and certified that the appellant suffered 70% disability and issued Ex.P16/disability certificate to that effect. Due to the injuries and disability, the appellant has taken treatment in different spells as in-patient at Stanely Hospital, Chennai, totally for 38 days and also has taken treatment as out-patient till 17.01.2009. But, the Tribunal has not awarded any amounts towards attendant charges, damage to clothes, loss of amenities, mental agony, future medical expenses and loss of income. The appellant was working in a Plastic Company and was earning a sum of Rs.6,000/- per month at the time of accident. Due to the injuries sustained by him in the accident, he could not do the work as he was doing earlier. But, the Tribunal has fixed meagre sum of Rs.1,500/- as monthly income of the appellant while awarding compensation towards disability by adopting multiplier method. The Tribunal ought to have fixed a sum of Rs.6,000/- as monthly income of the appellant and awarded compensation towards disability. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, Mrs.R.Sree Vidhya, the learned counsel appearing for the 2nd respondent/Insurance Company contended that 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 monthly income fixed by the Tribunal at Rs.1,500/- is on the higher side and the compensation awarded by the Tribunal towards disability by adopting multiplier method is excessive. The amounts awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

8. From the materials available on record, it is the contention of the appellant that in the accident, he sustained severe head injuries and grievous injuries all over the body. Several surgeries were conducted to rectify the injuries caused to the blood vessels. To prove the said contention appellant examined himself as P.W.1 and Doctor as P.W.2. P.W.2/Doctor examined the appellant and certified that the appellant has suffered 70% disability and issued Ex.P16/disability certificate to that effect. The Tribunal considering the evidence of P.W.2/Doctor, Ex.P16/disability certificate and nature of injuries sustained by the appellant, no contra evidence by the respondents, fixed disability suffered by the appellant at 70%. It is the contention of the appellant that he was working in a Plastic Company and was earning a sum of Rs.6,000/- per month. But the appellant failed to prove the said contention. In the absence of any material evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.1,500/- as monthly income of the appellant. The accident is of the year 2005 and the monthly income fixed by the Tribunal is meagre. Considering the year of accident, age and nature of work done by the appellant, a sum of Rs.4,500/- is fixed as monthly income of the appellant. Considering the nature of injuries and disability, the Tribunal adopted multiplier method while awarding compensation towards permanent disability. The appellant was aged 45 years at the time of accident. The Tribunal applied multiplier '15' as per II Schedule of the Motor Vehicles Act. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the multiplier applicable is '14'. Thus, the amount awarded by the Tribunal towards permanent disability is modified to Rs.5,29,200/- (Rs.4,500/- X 12 X 14 X 70/100). The appellant has taken treatment as in-patient in various spells at Stanley Hospital, Chennai, totally for 38 days and also has taken treatment as out-patient till 17.01.2009. But, the Tribunal has not awarded any amount towards attendant charges. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.25,000/- is awarded towards attendant charges. The amounts awarded by the Tribunal towards pain & sufferings and transportation, other medical expenses & extra nourishment are meagre and hence, the same are hereby enhanced to Rs.20,000/- and 15,000/- respectively. The amount awarded by the Tribunal towards medical expenses is just and reasonable and hence, the same is hereby confirmed.

9. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimant. 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.	Permanent disability	1,89,000/-	5,29,200/-	Enhanced
2.	Medical expenses	3,000/-	3,000/-	Confirmed
3.	Pain & suffering	4,000/-	20,000/-	Enhanced
4.	Transportation expenses, other medical expenses and extra nourishment	3,000/-	15,000/-	Enhanced
5.	Attendant charges	-	25,000/-	Granted
	Total	Rs.1,99,000/-	Rs.5,92,200/-	Enhanced by Rs.3,93,200/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,99,000/- is hereby enhanced to Rs.5,92,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the necessary Court fee, if any, on the enhanced compensation. Both the 1st respondent as well as the 2nd respondent/Insurance Company are directed to jointly and severally 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 to the credit of M.C.O.P.No.213 of 2006 on the file of the Motor Accident Claims Tribunal, Principal Sub-Court, Thiruvannamalai. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn by making necessary application before the Tribunal. No costs.

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Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

gbi

To

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

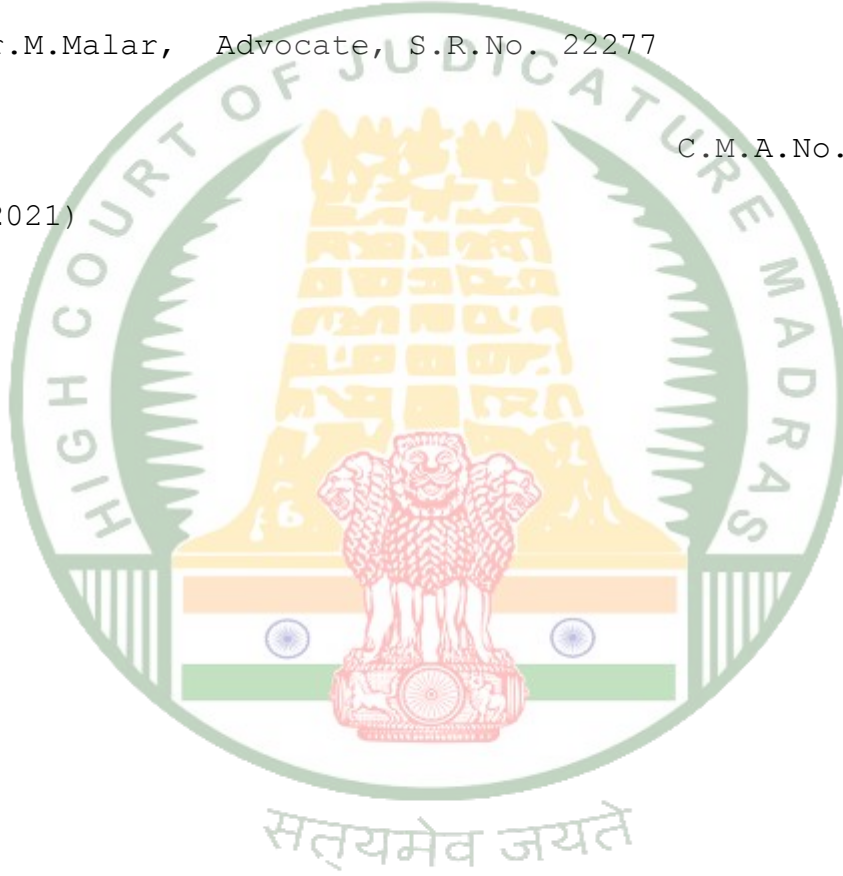
Copy To

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

+1cc to Mr.M.Malar, Advocate, S.R.No. 22277

C.M.A.No.688 of 2014

RSK (CO)
GN(04/02/2021)



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