

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4889 of 2019

C.Kathiresan

.. Appellant /Petitioner

Vs.

1.R.Ramachandran

2.United India Insurance Company Ltd.,
CB Hub, 1st Floor,
104/A, Peramanur Main Road,
Peramanur, Salem - 636 007.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.12.2018 made in M.C.O.P.No.1548 of 2016 on the file of Motor Accident Claims Tribunal, Special Sub Court No.1, Salem.

For Appellant : Mr.A.Sathishkumar
for Mr.C.Thangaraju
For R2 : Mr.C.Paranthaman

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 06.12.2018 made in M.C.O.P.No.1548 of 2016 on the file of Motor Accident Claims Tribunal, Special Sub Court No.1, Salem.

2.The appellant is claimant in M.C.O.P.No.1548 of 2016 on the file of Motor Accident Claims Tribunal, Special Sub Court No.1, Salem. He filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 13.06.2016.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the car and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.9,29,752/- as compensation to

the appellant.

4. Not being satisfied with the amount 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/claimant contended that the appellant was aged 44 years at the time of accident and was earning a sum of Rs.10,000/- per month by working as coolie. Due to the permanent disability, the appellant lost his future prospects. The Tribunal without considering the same, has fixed only a meagre sum of Rs.6,500/- as monthly income of the appellant. In the accident, the appellant sustained laceration over right side of neck, lateral carthus of right upper eyelid, abrasion over left forehead, nose, CT brain minimal left hemorrhage, CT spine mild posterior central disc protrusion at c3 - c4 level, CT left hip joint posterior, X-ray left shoulder comminuted fracture of proximal humerus and X-ray pelvis dislocation of left hip joint noted along with fracture of left acetabulum. Due to the injuries, the appellant could not lift weight and facing difficulty in sitting, standing and he could not do the work as he was doing earlier. Doctor has assessed the permanent disability of the appellant as 40%. The appellant suffered functional disability and the Tribunal ought to have adopted multiplier method while awarding compensation towards disability. The appellant is taking treatment regularly and the Tribunal ought to have awarded compensation towards future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not produced any documents to prove the avocation and income of the appellant. In the absence of any material evidence, with regard to avocation and income of the appellant. The Tribunal rightly fixed a sum of Rs.6,500/- as monthly income of the appellant which is not meagre. The Tribunal after considering all the materials available on record in proper perspective, has awarded just compensation, which is not excessive 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. It is the contention of the appellant that he was aged 44 years, at the time of the accident and was earning a sum of Rs.10,000/- per month by working as coolie. The appellant failed

to prove the said contention. In the absence of any material evidence with regard to avocation and income of the appellant, the Tribunal fixed a sum of Rs.6,500/- as monthly income of the appellant. The accident is of the year 2016 and the monthly income fixed by the Tribunal is meagre. Hence a sum of Rs.9,000/- is fixed as monthly income of the appellant. The Tribunal has awarded a sum of Rs.32,500/- towards loss of income for five months. Considering the nature of injuries sustained by the appellant, he would not have attended his work atleast for eight months. Therefore, a sum of Rs.72,000/- (Rs.9,000/- x 8) is awarded towards loss of income for eight months.

9. According to the appellant, he suffered multiple injuries all over the body. The Medical Board assessed the disability of the appellant as 40%. The disability certificate issued by the Medical Board was marked as Ex.C1. The appellant has not proved that he suffered functional disability and therefore, he is not entitled to compensation towards disability by adopting multiplier method. The Tribunal accepting the certificate issued by the Medical Board, awarded a sum of Rs.1,20,000/- (Rs.3,000/- x 40%) towards disability at the rate of Rs.3,000/- per percentage which is meagre and a sum of Rs.1,60,000/- is awarded towards disability (Rs.4,000/- x 40%) at the rate of Rs.4,000/- per percentage. The appellant has taken treatment as in-patient from 13.06.2016 to 07.07.2016 in Manipal Hospital, Salem. The appellant has produced Exs.P5 to P8/wound certificate, discharge summary, CT scan report and medical bills to prove the same. The amounts awarded by the Tribunal towards pain & suffering, extra nourishment, attendant charges, damage to clothes and loss of amenities are meagre. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.50,000/-, Rs.25,000/-, Rs.30,000/-, Rs.3,000/- and Rs.25,000/- are awarded towards pain & suffering, extra nourishment, attendant charges, damage to clothes and loss of amenities respectively. The amounts awarded by the Tribunal towards medical bills and transportation charges 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 or reduced
1.	Pain and sufferings	30,000	50,000	Enhanced
2.	Loss of income	32,500	72,000	Enhanced

3.	Medical bills	7,08,502	7,08,502	Confirmed
4.	Transportation charges	10,000	10,000	Confirmed
5.	Extra nourishment	10,000	25,000	Enhanced
6.	Attendant charges	10,000	30,000	Enhanced
7.	Damages to cloth	1,750	3,000	Enhanced
8.	Loss of amenities	7,000	25,000	Enhanced
9.	Disability	1,20,000	1,60,000	Enhanced
	Total	Rs.9,29,752/-	Rs.10,83,502/-	Enhanced by Rs.1,53,750/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,29,752/- is hereby enhanced to Rs.10,83,502/- 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 2nd respondent/Insurance Company 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 if any, already withdrawn. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

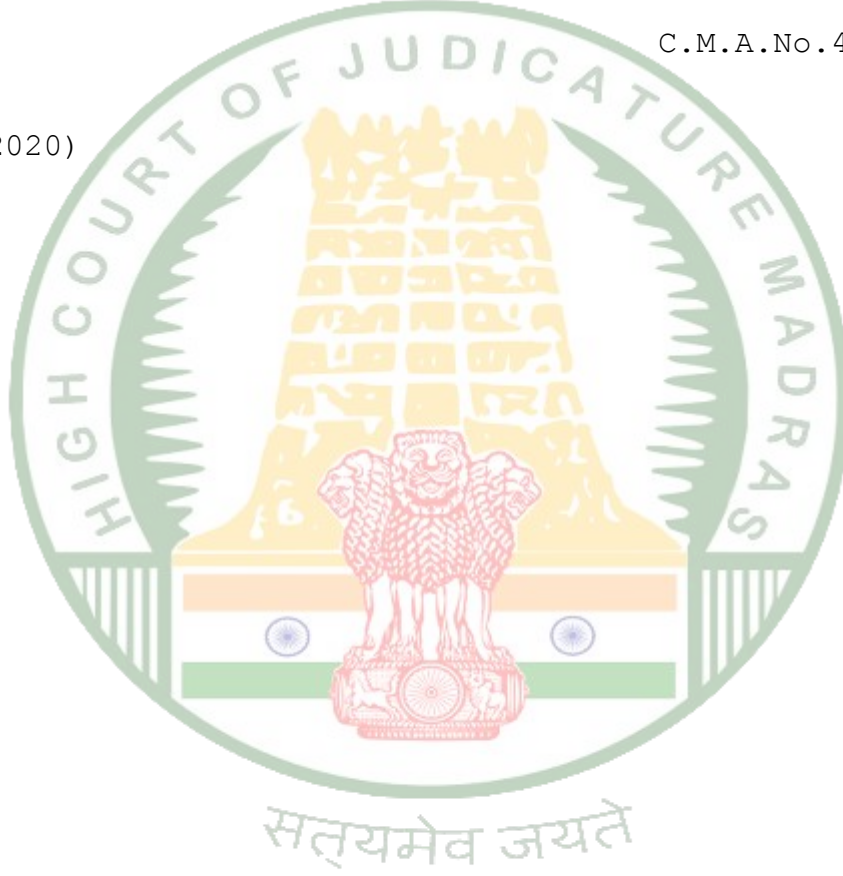
1.The Special Subordinate Judge No.1,
The Motor Accident Claims Tribunal
Salem.

2.The Section Officer
V.R.Section
High Court, Chennai.

+2cc to Mr.C.Thangaraju, Advocate, S.R.No. 3844
+1cc to Mr.C.Paranthaman, Advocate, S.R.No. 3657

C.M.A.No.4889 of 2019

MP (CO)
GN(16/09/2020)



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