

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.3302 of 2019 and 1271 of 2020

and

C.M.P.No.8880 of 2020 in CMA No.1271 of 2020

C.M.A.No.3302 of 2019

Muthuraja

S/o.Velusamy

... Appellant/Claimant

Vs.

1.Ayyasamy

S/o.Paulsamy Devar

[R1 - ex parte before lower Court]

2.Sriram General Insurance Co. Ltd.,

E-8, RIICO Industrial Area,

Chittapura, Jaipur,

Rajasthan - 302 022.

... Respondents/Respondents

C.M.A.No.1271 of 2020

Shri Ram General Insurance Company Ltd.,

No.10003, E-8, RIICO Industrial Area,

Sitapura, Jaipur, Rajasthan - 302 022.

Rajasthan State.

... Appellant/2nd Respondent

Vs.

1.Muthuraja

S/o.Velusamy

...Respondent/Claimant

2.Ayyasamy

S/o.Paulsamy Devar

[R2 - ex parte before lower Court]

... Respondent/Ist respondents

Prayer: Civil Miscellaneous Appeals filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.12.2018 passed in MCOP No.370 of 2015 on the file of Motor Accident Claims Tribunal, Sub Judge, Sathiyamangalam.

For appellant in C.M.A.No.3302 of 2019 and
first respondent in C.M.A.No.1271 of 2020 : Ms.P.T.Saleem
Fathima

For second respondent in C.M.A.No.3302 of 2019
and appellant in C.M.A.No.1271 of 2020 : Mr.K.Poomalai

COMMON JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J]

[Heard through Video Conference]

Since both the appeals arise against the judgment dated 18.12.2018 passed in M.C.O.P.No.370 of 2015 on the file of Motor Accident Claims Tribunal, Sub Judge, Sathiyamangalam, they are disposed of by a common judgment.

2. For the sake of convenience, parties are referred to as 'claimant' and 'insurance company'.

3. Not being satisfied with the quantum of compensation awarded by the Tribunal in and by its judgment dated 18.12.2018 passed in M.C.O.P.No.370 of 2015 on the file of Motor Accident Claims Tribunal, Sub Judge, Sathiyamangalam, claimant has filed C.M.A.No.3302 of 2019. Questioning the quantum of compensation awarded in the aforesaid judgment, insurance company has filed C.M.A.No.1271 of 2020.

4. The brief facts of the case is as follows:

On 03.05.2015 at about 10.45 p.m., while the claimant was travelling in an auto bearing Registration No.TN-60-F-7385 on the Kanniappampillaipatti - Aandipatti main road, a lorry bearing registration No.TN-58-8676, owned by first respondent in the claim petition and insured with the insurance company, came in a rash and negligent manner and dashed against the auto, due to which the claimant sustained grievous injuries. Immediately, the claimant was admitted in the Government Hospital, Theni,

where he was given first-aid and thereafter, he was shifted to Preethi Hospital, Madurai. In the said hospital, he had taken treatment as in-patient from 04.05.2015 to 27.05.2015 and 15.09.2015 to 03.11.2015. Claimant was working as a driver and was earning a sum of Rs.20,000/- p.m. Due to the injuries suffered by him, claimant is unable to walk and carry on his avocation. Claimant filed a claim petition seeking compensation in a sum of Rs.10,00,000/-. The second respondent insurance company has filed a detailed counter resisting the claim made by the claimant.

5. To prove the claim, claimant examined himself as PW-1 and marked 20 exhibits. On the side of insurance company, no witness was examined and no document was marked. Ex.C1 - Disability Certificate was marked through Court.

6. On appreciation of materials, the Tribunal found that the accident had occurred due to the rash and negligent driving of the lorry and awarded compensation in a sum of Rs.14,93,131/-. The break-up is as follows:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Permanant disability [5,000+2,500*12*13]	11,70,000/-
2.	Medical Bills	1,28,031/-
3.	Pain and suffering	1,00,000/-
4.	Transport expenses	35,100/-
5.	Loss of income during treatment	30,000/-
6.	Nutrition	15,000/-
7.	Attendant charges	15,000/-
	Total	14,93,131/-

The said sum was directed to be paid by insurance company, as insurer of the offending vehicle, together with interest at 7.5% p.a. from the date of petition till the date of deposit. Since the award amount i.e. Rs.14,93,131/- is more than the amount claimed by the claimant i.e. Rs.10,00,000/-, the Tribunal has directed the claimant to pay the Court fee for the excess amount of Rs.4,93,131/-.

7. Heard learned counsel for claimant and learned counsel for insurance company. Perused the materials on record.

8. This Court, under order dated 07.08.2019 in C.M.P.No.16609 of 2019 in C.M.A.Sr.No.96588 of 2019, permitted the claimant to enhance the claim of compensation from Rs.10,00,000/- to Rs.39,93,131/-

9. Learned counsel for insurance company submits that the question of awarding compensation by applying multiplier towards loss of earning capacity would arise only if it is established that the injured has suffered total permanent disability. In the present case, absolutely, no evidence was produced before the tribunal to show that the claimant has suffered total permanent disability. In the said circumstance, the amount of Rs.11,70,000/-awarded by tribunal, under the head permanent disability, by applying multiplier, warrants interference by this Court. Submitting as above, learned counsel prays this Court to award a consolidated sum under the head disability and thereby, set aside the compensation awarded by the tribunal under the head permanent disability.

10. Per contra, learned counsel appearing for claimant submits that as a result of the accident, claimant is unable to walk and carry on his avocation, as he was doing before. The claimant had taken treatment as in-patient from 04.05.2015 to 27.05.2015 and 15.09.2015 to 03.11.2015 in Preethi Hospital, Madurai. The Doctor had assessed the permanent disability at 50%, which is evident from Ex.C1 - Disability Certificate. Since the claimant was a driver, he could not carry on his avocation hereafter owing to the disability suffered by him. In such circumstance, the application of multiplier towards awarding compensation under the head disability cannot be found fault with and the same does not require any interference by this Court. At the same time, the Tribunal has fixed the monthly income of claimant only at Rs.10,000/-. Considering the cost of living that was prevailing at the time of accident and the avocation of claimant, this Court may fix a sum of Rs.20,000/- as the monthly income of claimant and thereby enhance the compensation.

11. This Court has considered the rival submissions. Since only the quantum of compensation is challenged, this Court is not dealing with the aspect 'rash and negligence'.

12. As a consequence of the accident, the claimant had sustained fracture of the right leg and also grievous injuries all over the body. The Doctor has assessed the permanent disability at 50%, which is evident from Ex.C1 - Disability Certificate. Owing to the injuries suffered by the claimant, he could not carry on his avocation as a driver. In such circumstance, this Court does not find any infirmity in applying multiplier towards awarding compensation under the head permanent disability. Considering the nature of injuries suffered by the claimant and the cost of living that was prevailing at the time of accident as also the avocation of claimant, this Court is of the view that it would be appropriate to fix a sum of Rs.12,000/- as the monthly income of the claimant to arrive at a just and proper compensation. Accordingly, a sum of Rs.12,000/- is fixed as the monthly income of claimant. As the claimant was aged 49 at the time of accident, 25% has to be awarded towards future prospects and if it is so awarded, the monthly income works out to Rs.15,000/- (12,000 + 3,000). The annual income would be Rs.1,80,000/- (15,000 * 12). The multiplier to be applied in the case is '13' and if it is so applied, the loss of earning power works out to Rs.23,40,000/- and if 50% is applied towards permanent disability as assessed by Doctor, the loss of earning power works out to Rs.11,70,000/-. Even if a sum of Rs.12,000/- is fixed towards monthly income of the claimant, the loss of earning power comes to Rs.11,70,000/-, which amount tallies with the amount awarded by the tribunal under the head 'permanent disability'. This Court finds that no sum has been awarded towards loss of amenities and hence, a sum of Rs.1,00,000/- is awarded under such head. In all other heads, the amount awarded by the tribunal is hereby confirmed.

13. Accordingly, the modified compensation payable would be:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Permanant disability/ loss of earning power [12000+25%*12*13*50%]	11,70,000/-
2.	Medical Bills	1,28,031/-
3.	Pain and suffering	1,00,000/-

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
4.	Loss of amenities	1,00,000/-
5.	Transport expenses	35,100/-
6.	Loss of income during treatment	30,000/-
7.	Nutrition	15,000/-
8.	Attendant charges	15,000/-
	Total	15,93,131/-

- In the result,
- (i) C.M.A.No.3302 of 2019 is partly allowed. The compensation of Rs.14,93,131/- awarded by the Tribunal is hereby enhanced to Rs.15,93,131/- [Rupees Fifteen Lakhs Ninety Three Thousand One Hundred and Thirty One only]. Insurance company is directed to deposit the enhanced compensation of Rs.15,93,131/- together with interest at 7.5% p.a. from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of this judgment. On such deposit, claimant is entitled to withdraw the same on due application.
- (ii) C.M.A.No.1271 of 2020 is dismissed. Connected miscellaneous petition is closed.

No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

gm

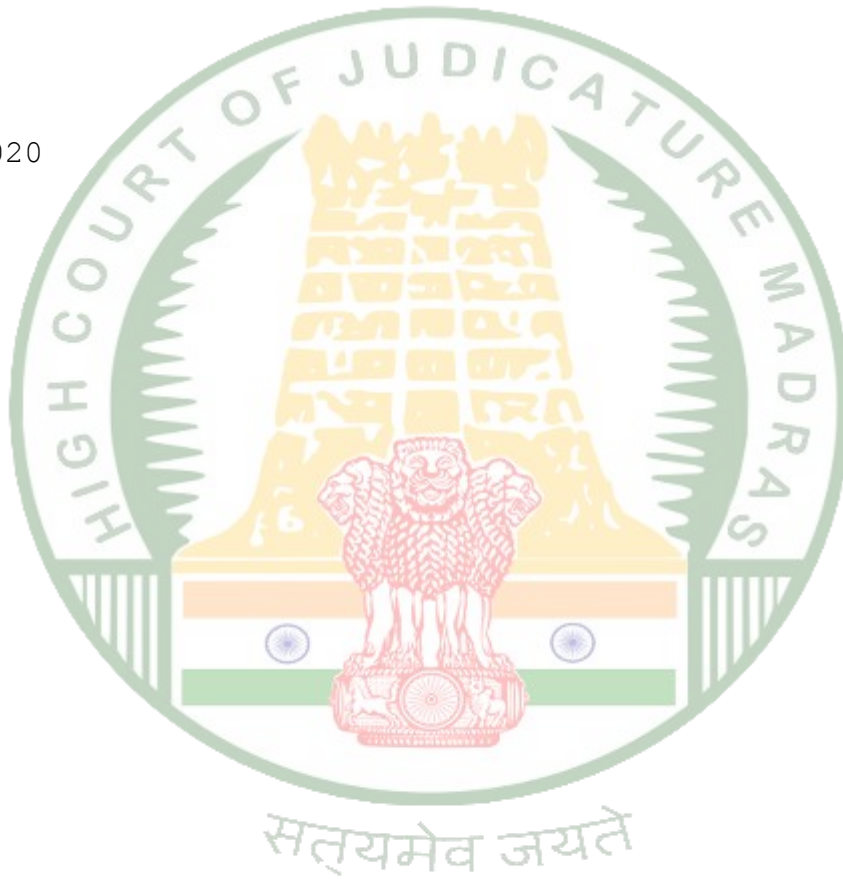
To
The Motor Accident Claims Tribunal,
Sub Judge,
Sathiyamangalam.

2.The Section Officer
VR Section
High Court Madras

+1 cc to Mr.Saleem Fathima Advocate sr27548
+1 cc to Mr.K.Poomalai Advocate sr27702

C.M.A.Nos.3302 of 2019 and 1271 of 2020

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