

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4646 of 2019

Uppili @ Uppiliyappan

.. Appellant/Petitioner

Vs.

1.Saravanan

2.The Divisional Manager,
National Insurance Company Limited,
Division Office,
No.47A, Paramathi road,
Namakkal District.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.07.2018 made in M.C.O.P.No.805 of 2017 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Namakkal.

For Appellants : Mr.A.Sathishkumar for
for Mr.C.Thangaraju

For Respondents: M/s.N.B.Surekha for R2

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the Judgment and Decree dated 17.07.2018 made in M.C.O.P.No.805 of 2017 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Namakkal.

2.The appellant is claimant in M.C.O.P.No.805 of 2017 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Namakkal. He filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 09.01.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle bearing Registration No.TN 28 AY 7925 belonging to the first respondent and directed the second respondent, as insurer of the vehicle to pay a sum of Rs.1,48,000/- as compensation to the appellant at the first instance and recover the same from the owner of the vehicle, the first respondent herein.

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 the appellant was working as Mechanic and was earning a sum of Rs.15,000 per month. Due to the grievous injuries sustained in the accident, the appellant could not do his work for a period of nine months and the Tribunal erroneously fixed a sum of Rs.4,000/- as monthly income and granted compensation towards loss of income for a period of two months. P.W.2 -Doctor assessed disability of the appellant as 30% and issued disability certificate which is marked as Ex.P14. Due to the injuries, the appellant could not do his work as he was doing earlier. The Tribunal considering the nature of injuries, ought to have adopted multiplier method in granting compensation. The accident occurred in the year 2011 and the amount awarded by the Tribunal for disability at the rate of Rs.3,000/- per percentage of disability is meagre. The Tribunal failed to award any amount towards loss of amenities and mental agony and the amounts awarded by the Tribunal under other heads are also meager and prayed for enhancement of compensation.

6.Per contra, learned counsel appearing for the second respondent/ Insurance Company contended that the Tribunal, in the absence of any material evidence to prove the avocation and income of the appellant, considering the nature of injuries and the treatment taken by him, has granted compensation towards loss of income for 2 months. The same is not meagre. The appellant has rightly awarded the compensation towards disability, by adopting percentage method at the rate of Rs.3,000/- per percentage. The compensation granted by the Tribunal under different heads are 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 2nd respondent and perused the materials available on

record.

8.It is the contention of the appellant that he was working as mechanic and was earning a sum of Rs.15,000/- per month. He failed to prove the same. The Tribunal, in the absence of any material evidence with regard to avocation and income of the appellant, fixed a sum of Rs.4,000/- as monthly income. The accident is of the year 2011 and the income fixed by the Tribunal is meagre. Hence, a sum of Rs.10,000/- is fixed as monthly income of the appellant. In the accident, the appellant suffered grievous injuries and had undergone surgery. He has taken treatment as in-patient in hospital from 09.01.2011 to 18.01.2011. In support of the same, he has marked the discharge summary, X-ray report and disability certificates as exhibits. For the injuries sustained in the accident, P.W.2 Doctor assessed the percentage of disability as 30%. The Tribunal awarded a sum of Rs.90,000/- towards disability at the rate of Rs.3,000/- per percentage. Due to the injuries sustained in the accident, the appellant would not have worked atleast for six months. The appellant is entitled to a sum of Rs.60,000/- (Rs.10,000/- x 6 months) towards loss of income for a period of 6 months. The amounts awarded by the Tribunal under the heads, transportation, and extra nourishment are meagre. The same are enhanced to Rs.10,000/- and Rs.20,000/- respectively. The Tribunal failed to award any amount towards attendant charges, loss of amenities and damage to clothes. Considering the nature of injuries and period of treatment, a sum of Rs.10,000/- each towards attendant charges and loss of amenities and Rs.3,000/- towards damage to clothes respectively is awarded by this Court. The amounts awarded by the Tribunal under other heads 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.	Loss of income	8,000/-	60,000/-	enhanced
2.	Transportation	5,000/-	10,000/-	enhanced
3.	Extra nourishment	10,000/-	20,000/-	enhanced
4.	Damages to clothes	-	3,000/-	granted

5.	Attendant charges	-	10,000/-	granted
6.	Loss of amenities	-	10,000/-	granted
7.	Pain and suffering	35,000/-	35,000/-	confirmed
8.	Disability	90000/-	90,000/-	confirmed
	Total	1,48,000/-	2,38,000/-	Enhanced by Rs.90,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,48,000/- is hereby enhanced to Rs.2,38,000/- 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 Court fee, if any on the enhanced amount of compensation. The second 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, at the first instance and recover the same from the first respondent. 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 by making necessary applications before the Tribunal. No costs.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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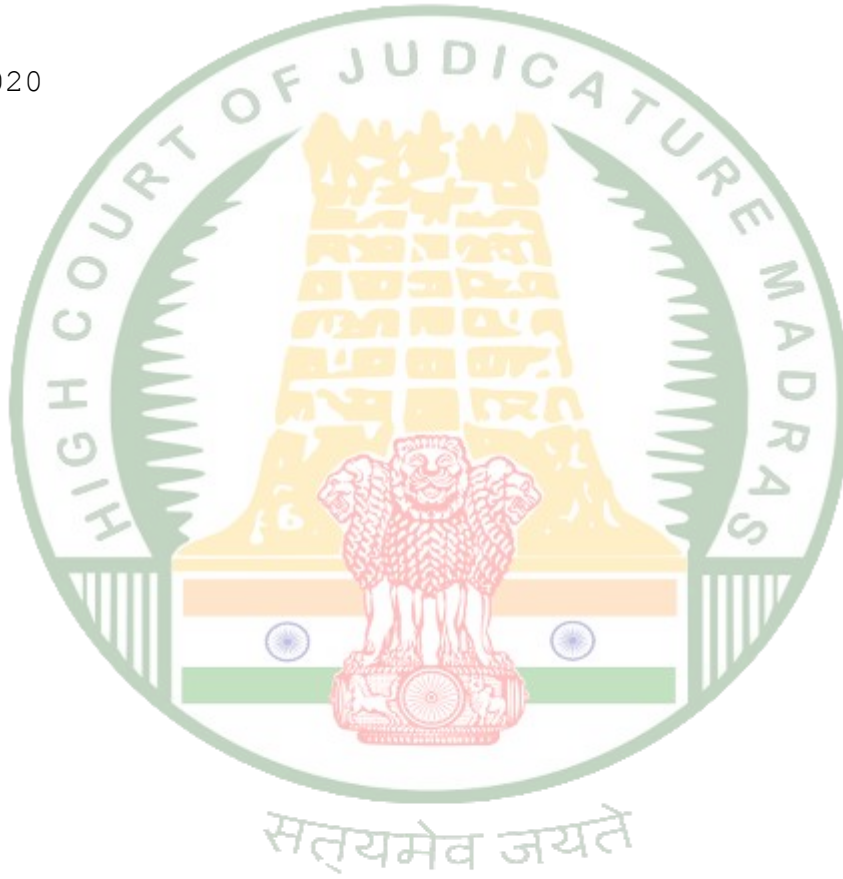
1. The Chief Judicial Magistrate,
The Motor Accident Claims Tribunal,
Namakkal.

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

+2 ccs to Mr.C.Thangarasu Advocate sr2364
+1 cc to M/s.N.B.Surekha Advocate sr2131

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