

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.3717 of 2019

Elumalai,
S/o. Thulukanam,
Kurumankulam Village,
Othiyathur Madura,
Gingee Taluk,
Villupuram District.

... Appellant

Vs.

1. P.Raja,
Kulakarai Street,
Pasumalaithangal Village,
Gingee Taluk,
Villupuram District.

2. The Branch Manager,
New India Assurance Company Limited,
East Cost Chamber No.92,
G.N.Chetty Road,
T.Nagar, Chennai.

... Respondents

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the Order and decree passed in M.C.O.P. No.327 of 2019, dated 26.11.2018 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge Court), Gingee.

For Appellant : Mr.R.Arundattan

For Respondents : R1 – exparte

Mrs. Saraswathi
for R2

J U D G M E N T

The claimant, not feeling satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Subordinate Judge, Gingee in MCOP No.327 of 2013, has filed the present Civil Miscellaneous Appeal before this Court seeking enhancement of compensation.

2. The case of claimant in brief is as follows :-

According to the claimant, on 31.12.2009, at about 09.00 p.m. while he was riding a two wheeler along with his uncle from Alampundi village to Krukkankulam village, another two wheeler viz., TVS Star city, bearing Regn. No.TN-32 T-7989 driven by the 1st respondent, which was insured with the 2nd respondent came in a rash and negligent manner and dashed against the claimant's vehicle. Both the claimant and billion rider sustained injuries and he was admitted in the Government Hospital, Gingee

and undergone treatment. At the time of accident, the claimant is a milk vendor and earning a sum of Rs.10,000/- per month. Due to the injury sustained by him in the road accident, the claimant has suffered permanent disability and he is not able to continue his avocation. Hence, claiming a compensation of Rs.10 lakhs, the claimant has filed a claim petition before the Tribunal.

3. Both the respondents were remained exparte.

4. Before the Tribunal, the claimant himself was examined as P.W.1 and marked as many as 8 documents as Ex.P1 to P8. On the side of respondent, no witness was examined and no document was marked. The disability certificate issued by the medical board was marked as Ex.C1.

5. The Tribunal, considering the materials available on record, has come to a conclusion that the accident was taken place due to the rash and negligent driving of driver of 1st respondent two wheeler and considering the disability certificate issued by the medical board, applied the multiplier

of 15, awarded a sum of Rs.3,78,000/- towards permanent disability and loss of future earning. In respect of other heads, the Tribunal has awarded a sum of Rs.25,000/- towards pain and sufferings, a sum of Rs.8,400/- towards attender charges, a sum of Rs.15,000/- towards extra nourishment and damages to articles, and a sum of Rs.5000/- towards transport expenses. Thus, totally, the Tribunal has awarded a sum of Rs.4,31,400/- as compensation to the claimant. Not being satisfied with the quantum of compensation, the claimant is before this Court with this Civil Miscellaneous Appeal.

6. I have heard the rival submissions made by the learned counsel appearing for appellant as well as 2nd respondent and perused the materials available on record.

7. The accident was taken place on 31.12.2009, in which the claimant has sustained a fracture in the knee of right leg and he was admitted in the Government General Hospital, Gingee from 01.01.2010 to 23.01.2010 and again from 24.02.2011 to 14.03.2011, totally 42 days and

after treatment, the grievance of appellant is that he is not able to sit properly and knee movement is also considerably restricted. The claimant was referred to the medical board for assessing the disability and the Medical Board has assessed the disability at 35% of permanent disability. Accepting the disability assessed by the medical board and applying the multiplier, the Tribunal has rightly awarded a sum of Rs.3,78,000/-. This Court finds no error in it. So far as compensation awarded towards other heads, considering the nature of injury sustained by the appellant and duration of hospitalisation, this Court is inclined to grant a sum of Rs. 30,000/- towards pain and suffering instead of Rs.25,000/-, a sum of Rs.15,000/- towards attender charges instead of Rs.8,400/-, towards extra nourishment, and a sum of Rs.22,000/- is granted instead of Rs.15,000/- awarded by the Tribunal. That apart, a sum of Rs.5000/- awarded by the Tribunal towards attender charges is confirmed.

8. In view of the above, the compensation awarded by the Tribunal is modified as follows :-

<i>Sl. No.</i>	<i>Headings</i>	<i>Amount Awarded by the Tribunal Rs.</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed or enhanced</i>
1	Towards disability and loss of future earning	3,78,000	3,78,000	confirmed
2	Pain and sufferings	25,000	30,000	confirmed
3	Attender charges	8,400	15,000	enhanced
4	Extra nourishment and loss of articles	15,000	22,000	enhanced
5	Transport expenses	5,000	5,000	confirmed
	Total	4,31,400	4,50,000	enhanced

Thus, the appellant is entitled to get a sum of Rs.4,50,000/- as compensation, instead of Rs.4,31,400/- awarded by the Tribunal.

9. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,31,400/- is hereby enhanced to Rs.4,50,000/- 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 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 is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

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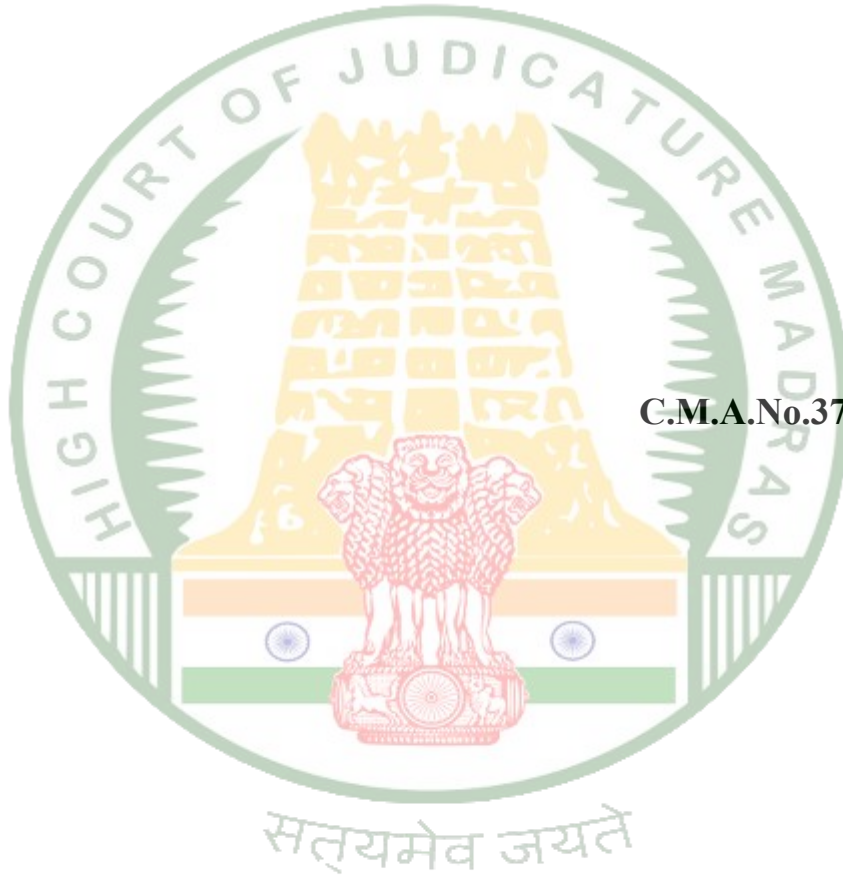
The Motor Accidents Claims Tribunal,
Subordinate Court, Gingee.



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V. BHARATHIDASAN, J.,

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