

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4842 of 2019

S.Shanthamurthy

.. Appellant/Petitioner

Vs.

1.S.Sivakumar@ Sivaperumal

2.National Insurance Company Limited,
Divisional Office - 10,
New Delhi - 110 002.
Local Address Branch Office:-
No.333, 3rd Floor, Anuradha Complex,
Bangalore Road, Krishnagiri 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 22.04.2019 made in M.C.O.P.No.206 of 2017 on the file of the Motor Accident Claims Tribunal, Sub Court, Uthangarai.

For Appellant : Mr.J.Pradeep

For R2 : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 22.04.2019 made in M.C.O.P.No.206 of 2017 on the file of the Motor Accident Claims Tribunal, Sub Court, Uthangarai.

2.By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3.The appellant is the claimant in M.C.O.P.No.206 of 2017 on the file of the Motor Accident Claims Tribunal, Sub Court, Uthangarai. He filed the above said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the injuries sustained by him in the accident that took place on 08.03.2016.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the rider of the motorcycle belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the motorcycle to pay a sum of Rs.8,51,000/- as compensation to the appellant/claimant.

5.Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellant contended that the appellant was working as an operator in M/s. Sree Narendra Aluminium Industry and was earning a sum of Rs.20,000/- per month. The Tribunal erred in fixing a meagre sum of Rs.8,000/- per month as notional income of the appellant. The amount fixed by the Tribunal is less than the minimum wages fixed by the Act. The multiplier adopted and method of calculation made by the Tribunal for granting compensation for disability is erroneous. The Tribunal has not awarded any amount towards future prospects and future medical expenses. The appellant's left leg below knee was amputated and the Tribunal has not awarded any amount towards fixation of artificial leg. The total amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7.Per contra, Mr.J.Chandran, learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not substantiated his claim with regard to his avocation and income. In the absence of acceptable evidence, the Tribunal has fixed a sum of Rs.8,000/- per month as notional income of the appellant, which is not meagre. The Tribunal has not properly appreciated the disability certificate issued by the Medical Board and erred in adopting multiplier method for awarding compensation towards disability. The total compensation awarded by the Tribunal is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent and perused the entire materials on record.

9.It is contention of the appellant that he was working as an operator in M/s. Sree Narendra Aluminium Industry and was earning a sum of Rs.20,000/- per month. The appellant produced Ex.P8/salary certificate to prove the avocation and income. The Tribunal did not accept the said certificate and fixed meagre

sum of Rs.8,000/- per month as notional income of the appellant. The accident occurred in the year 2016. Therefore, a sum of Rs.12,000/- per month is fixed as notional income of the appellant. The appellant was aged 36 years at the time of accident and the correct multiplier applicable is '15', but the Tribunal erroneously applied multiplier '18'. After arriving at compensation of Rs.11,23,200/- for 65% disability, the Tribunal erroneously calculated 40% on the said amount of Rs.11,23,200/- and arrived at a sum of Rs.4,49,280/- as compensation towards permanent disability. The appellant is entitled to compensation for 65% disability as certified by the Medical Board. A Division Bench of this Court in the judgment reported in 2005 1 CTC 38, [United India Insurance Company Vs. Veluchamy], held that 'considering the facts of the case, a lesser multiplier can be adopted for arriving at quantum of compensation for disability'. Applying the said ratio of the above judgment, multiplier '10' is proper for the present case. In view of the above, the amount awarded by the Tribunal towards disability is modified to Rs.9,36,000/- [Rs.12,000/- X 12 X 10 X 65/100]. The appellant has contended that his left leg below knee was amputated and the Tribunal has not awarded any amount towards fixation of artificial leg. Therefore, a sum of Rs.1,00,000/- is awarded towards fixation of artificial leg. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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.	Disability	4,49,280/-	9,36,000/-	Enhanced
2.	Medical bills	1,30,000/-	1,30,000/-	Confirmed
3.	Transportation	20,000/-	20,000/-	Confirmed
4.	Extra nourishment	30,000/-	30,000/-	Confirmed
5.	Attendant charges	20,000/-	20,000/-	Confirmed
6.	Pain and sufferings	1,00,000/-	1,00,000/-	Confirmed
7.	Loss of amenities	1,00,000/-	1,00,000/-	Confirmed
8.	Damage to cloth	10,000/-	10,000/-	Confirmed
9.	Fixation of artificial leg	-	1,00,000/-	Granted

Total	Rs.8,59,280/-	Rs.14,46,000/-	enhanced by Rs.5,95,000/-
Amount awarded by the Tribunal	Rs.8,50,280/ - rounded off to Rs.8,51,000/-		(Rs.14,46,00 0/- - Rs.8,51,000/ -)

Though the Tribunal has arrived at a sum of Rs.8,59,280/- as compensation, wrongly calculated the same as Rs.8,51,000/- as compensation to the appellant.

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,51,000/- is hereby enhanced to Rs.14,46,000/- together with interest at the rate of 9% per annum from the date of petition till the date of deposit. The appellant is directed to pay the necessary Court fee for Rs.5,95,000/-, the amount now enhanced by this Court as per the order of this Court dated 04.12.2019 made in C.M.P.No.25757 of 2019 in C.M.A.SR.No.120406 of 2019. 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 to the credit of M.C.O.P.No.206 of 2017 on the file of the Motor Accident Claims Tribunal, Sub Court, Uthangarai. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. It is made clear that the appellant is not entitled to any interest for the delay period in filing the appeal on Rs.5,95,000/-, the amount now enhanced by this Court, as per the order of this Court dated 12.12.2019 made in C.M.P.No.26459 of 2019 in C.M.A.(SR)No.120406 of 2019. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Uthangarai.

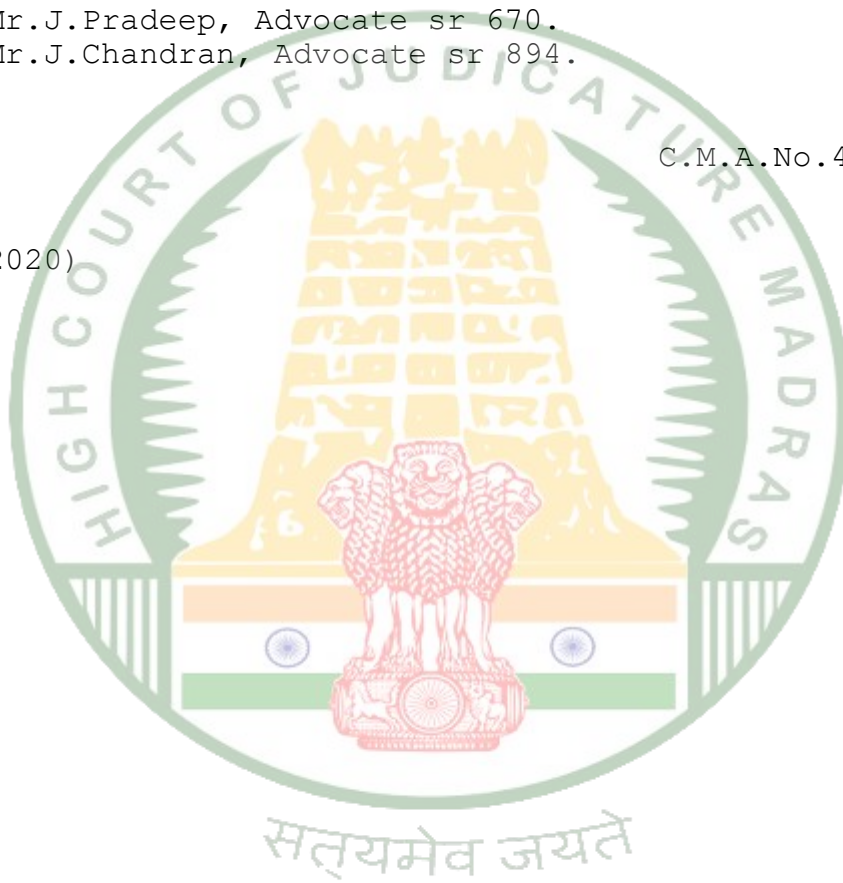
2.The Section Officer,
VR Section,
High Court,
Madras-104.

+1 CC to Mr.J.Pradeep, Advocate sr 670.

+1 Cc to Mr.J.Chandran, Advocate sr 894.

C.M.A.No.4842 of 2019

AK(CO)
SP(27/11/2020)



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