

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4645 of 2019

M.Chinnathambi

.. Appellant/Claimant

Vs.

1.S.Deepa

2.National Insurance Company Limited,
74A, Paramathi road, Namakkal town,
Namakkal District. .. Respondents/Respondents
(1st respondent remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.04.2019 made in M.C.O.P.No.539 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.R.Nalliyappan
For Respondents : Mr.S.Vadivel for R2
R1 - Not Ready in Notice

JUDGMENT

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 15.04.2019 made in M.C.O.P.No.539 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.

2.The appellant is the claimant in M.C.O.P.No.539 of 2016 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.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.07.2016.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the first respondent, insured with the second respondent and directed the respondents 1 and 2 to pay a sum of Rs.1,93,960/- as compensation to the appellant.

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 suffered multiple fractures all over the body and a surgery was also performed on 02.07.2016. P.W.3/Doctor was examined to prove the disability suffered by the appellant and he assessed 12% disability. Due to the fractures, the appellant could not do the work as he was doing earlier. The Tribunal awarded only a sum of Rs.36,000/- towards disability. Though P.W.3/Doctor has assessed the disability as 12%, the appellant suffered 100% loss of earning power. The Tribunal ought to have adopted multiplier method while awarding compensation towards disability. The appellant was working as an agriculturist and was earning a sum of Rs.15,000/- per month. The Tribunal has fixed a meagre sum of Rs.3,000/- per month as notional income of the appellant and awarded a sum of Rs.6,000/- (Rs.3,000/- x 2 months) towards loss of income for 2 months. The Tribunal has not awarded any amount towards future medical expenses. The compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, Mr.S.Vadivel, learned counsel appearing for the second respondent- Insurance Company contended that the Tribunal accepted the disability certificate issued by P.W.3-Doctor and granted compensation. In the absence of any evidence with regard to income of the appellant, the Tribunal has fixed notional income of the appellant at Rs.3,000/- per month and awarded a sum of Rs.6,000/- (Rs.3,000/-x 2) towards loss of income. The said amount is excessive. The total compensation awarded by the Tribunal under different heads are not meagre 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 second respondent- Insurance Company and perused the entire materials on record.

8. From the materials available on record, it is seen that the appellant has contended that he suffered seven fractures in the whole body. To substantiate the injuries sustained by him, the appellant has examined P.W.3/Doctor, who deposed about the nature of injuries and treatment taken by the appellant and assessed the disability as 12%. In the absence of any contra evidence, the Tribunal has accepted the disability assessed by the doctor and awarded a sum of Rs.36,000/- towards disability by awarding Rs.3,000/- per percentage of disability. The appellant has not proved that he suffered functional disability

and hence, he is not entitled to compensation by applying multiplier method. The amount awarded by the Tribunal per percentage of disability is meagre. The amount awarded on percentage basis was periodically enhanced. This Court by the judgment reported in "2013(2) TNMAC 583" in the matter of "National Insurance Co. Ltd., Vs. G.Ramesh", granted Rs.3,000/- per percentage for accident occurred in the year 2009, enhancing from Rs.2,000/- per percentage taking into account the cost of living at that time. Due to passage of time, a sum of Rs.3,000/- per percentage of disability awarded in the year 2013 for the accident of the year 2009 is to be enhanced. Taking into consideration the raise in cost of living, it will be reasonable to award a sum of Rs.4,000/- per percentage for the accident of the year 2014 and 2015 and Rs.5,000/- per percentage for the accident from the year 2016 onwards towards disability certified by the qualified Doctor or Medical Board. In the present case, the accident has occurred on 01.07.2016. A sum of Rs.5,000/- per percentage of disability is granted. Accordingly, a sum of Rs.60,000/- (Rs.5,000/- X 12%) is awarded towards disability by awarding a sum of Rs.5,000/- per percentage of disability. According to the appellant, he was aged 36 years at the time of accident and was earning a sum of Rs.15,000/- per month by doing agriculture. The appellant has not filed any document to prove the same. Hence, the Tribunal has fixed a sum of Rs.3,000/- as monthly income of the appellant and awarded a sum of Rs.6,000/- towards loss of income for a period of two months. The accident is of the year 2016 and the monthly income fixed by the Tribunal is meagre. A sum of Rs.10,000/- is fixed as monthly income of the appellant. Due to the fractures, the appellant would not have attended his work atleast for a period of four months. Therefore, the appellant is entitled to a sum of Rs.40,000/- (Rs.10,000/- X 4) towards loss of income for four months.

9. According to the appellant, he was admitted in hospital on 02.07.2016 and underwent surgery on the same day and has taken treatment for 5 days. The Tribunal has not awarded any amount towards attendant charges. Hence, a sum of Rs.10,000/- is granted by this Court. The Tribunal has awarded a meagre amount of Rs.5,000/- towards transportation and the same is hereby enhanced to Rs.10,000/-. The Tribunal has not awarded any amount towards loss of amenities and damage to clothes. Considering the nature of injuries and disability suffered by the appellant, a sum of Rs.10,000/- and Rs.3,000/- are granted towards loss of amenities and damage to clothes. The amounts granted by the Tribunal under the other heads are just and reasonable and hence, they 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	6,000/-	40,000/-	enhanced
2.	Transportation	5,000/-	10,000/-	enhanced
3.	Extra nourishment	10,000/-	10,000/-	confirmed
4.	Medical bills	1,06,960/-	1,06,960/-	confirmed
5.	Pain & sufferings	30,000/-	30,000/-	confirmed
6.	Disability	36,000/-	60,000/-	enhanced
7.	Damage to clothes	-	3,000/-	granted
8.	Loss of Amenities	-	10,000/-	granted
9.	Attendant charges	-	10,000/-	granted
	Total	Rs.1,93,960/-	Rs.2,79,960/-	enhanced by Rs.86,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,93,960/- is hereby enhanced to Rs.2,79,960/- 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 respondents 1 and 2 are 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 by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

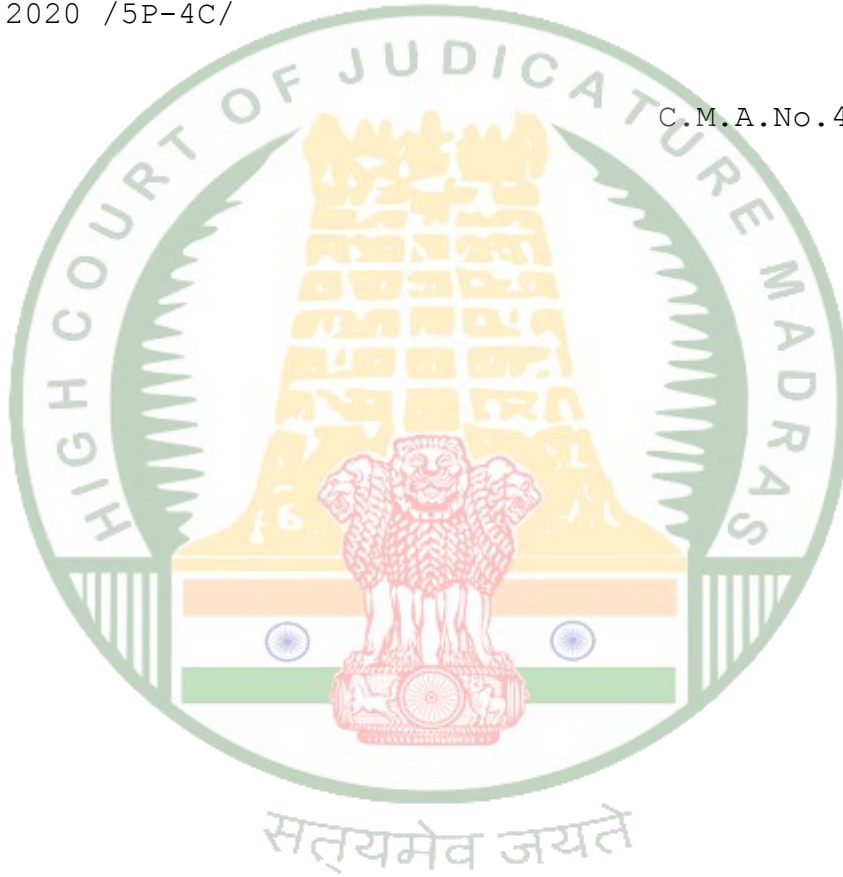
To

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

+lcc to Mr.S.Vadivel, Advocate Sr.No.2601
+lcc to Mr.R.Nalliyappan, Advocate Sr.No.2521

AKM/24.02.2020 /5P-4C/

C.M.A.No.4645 of 2019



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