

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3302 of 2017

C.Manikandan

.. Appellant /Claimant

Vs.

1.C.Sudharsan

...R1/R1

2.Oriental Insurance Co.Ltd.

Hosur branch

23-B, ground floor

Arunagiri complex

Bye-pass road

Hosur-635 109

Krishnagiri District.

...R2/R2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.08.2017 made in M.C.O.P.No.24 of 2012 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Krishnagiri.

For Appellant : Mr.P.Mani

For R1 (Served) : No appearance

For R2 : Mr.J.Chandran

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 18.08.2017 made in M.C.O.P.No.24 of 2012 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Krishnagiri.

2.The appellant is claimant in M.C.O.P.No.24 of 2012 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Krishnagiri. He filed the 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 25.07.2011.

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 bus belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said bus to pay a sum of Rs.2,47,000/- as compensation to the appellant at the first instance and recover the same from the 1st respondent.

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/claimant contended that the appellant was aged 22 years at the time of accident, he has completed graduate in Computer Science and was earning a sum of Rs.5,000/- per month by working as agriculturist. The Tribunal ought to have awarded more compensation towards loss of income. Due to the accident, the appellant sustained fracture at his nasal bone, maxilla bone and six bones on his face. Therefore, he has difficulty in breathing and chewing food. P.W.2/Doctor has assessed the disability of the appellant as 55%. The Tribunal without considering the same, awarded only a meagre sum towards disability. The amounts awarded by the Tribunal towards under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal fixed a sum of Rs.5,000/- as monthly income of the appellant as claimed in the claim petition and the same does not warrant any interference. The Tribunal after considering the materials available on record, has awarded just compensation. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

9.It is the contention of the appellant that he was aged 22 years at the time of accident. He was earning a sum of

Rs.5,000/- per month by working as agriculturist and he has also completed graduation in Computer Science. The appellant failed to prove the said contention. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.5,000/- as monthly income of the appellant and awarded a sum of Rs.15,000/- (Rs.5,000/- X 3) towards loss of income for three months. Considering the year of accident and the educational qualification of the appellant, the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.8,000/- is fixed as monthly income of the appellant. Due to the injuries sustained by the appellant, he would not have attended his work atleast for six months. Thus, a sum of Rs.48,000/- (Rs.8,000/- X 6) is awarded towards loss of income for six months.

10. Due to the accident, the appellant has sustained grievous injury on his nasal bone, bleeding in nose, fracture of three teeth & right nasal bone and disfiguration of face. He has taken treatment as in-patient in Jeeva hospital, Krishnagiri, from 25.07.2011 to 01.08.2011, then he has taken treatment as in-patient in Narayana health city, Bangalore, from 26.01.2012 to 28.01.2012 and then, he has taken treatment as in-patient in Sparsh hospital, Bangalore, from 02.08.2011 to 05.08.2011. The Medical officer has fixed the disability of the appellant as 40%. Considering the nature of injuries sustained by the appellant, the Tribunal reduced the disability to 35% and awarded a sum of Rs.1,05,000/- (Rs.3,000/- X 35%) towards disability. The reason given by the Tribunal for reducing the percentage of disability is not correct. The appellant is entitled to compensation for 40% disability at the rate of Rs.3,000/- per percentage of disability. Thus, a sum of Rs.1,20,000/- (Rs.3,000/- X 40%) is awarded towards disability. The sum of Rs.30,000/-, Rs.3,000/- and Rs.2,000/- awarded by the Tribunal towards pain & suffering, extra nourishment and transportation respectively are meagre. Considering the nature of injuries and the period of treatment taken by the appellant, the amounts awarded by the Tribunal towards pain & suffering, extra nourishment and transportation are enhanced to Rs.50,000/-, Rs.10,000/- and Rs.10,000/- respectively. The Tribunal has not awarded any compensation towards attendant charges and loss of amenities. Considering the period of treatment taken by the appellant and the disfiguration of face, a sum of Rs.10,000/- and Rs.30,000/- are awarded towards attendant charges and loss of amenities respectively. The compensation awarded by the Tribunal towards medical expenses is just and reasonable and hence, the same is 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 or reduced
1.	Loss of income	15,000	48,000	Enhanced
2.	Pain and suffering	30,000	50,000	Enhanced
3.	Extra nourishment	3,000	10,000	Enhanced
4.	Transportation	2,000	10,000	Enhanced
5.	Permanent disability	1,05,000	1,20,000	Enhanced
6.	Medical expenses	74,000	74,000	Confirmed
7.	Attendant charges	-	10,000	Granted
8.	Loss of amenities	-	30,000	Granted
	Total	2,29,000 Tribunal awarded 2,47,000	3,52,000	Enhanced by Rs.1,05,000 /-

Though the Tribunal arrived at a sum of Rs.2,29,000/- as compensation, it has awarded a sum of Rs.2,47,000/- as compensation to the appellant.

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,47,000/- is hereby enhanced to Rs.3,52,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant 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 at the first instance and recover the same from the 1st 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. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To
1.Principal Subordinate Judge
The Motor Accident Claims Tribunal
Krishnagiri.

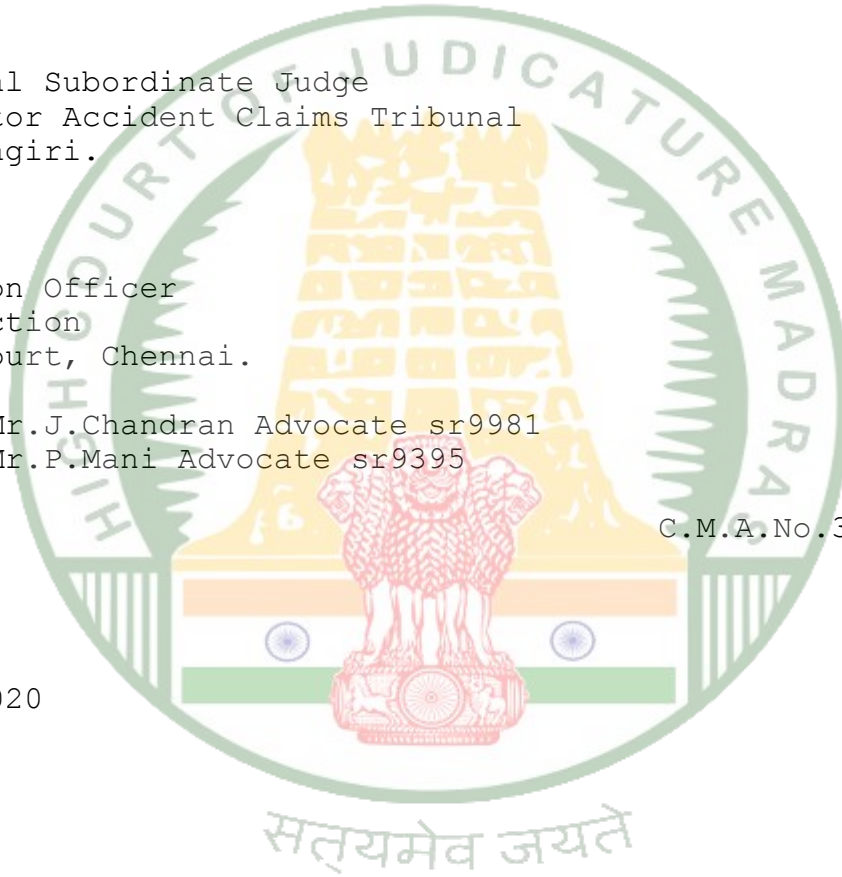
Copy to

The Section Officer
V.R.Section
High Court, Chennai.

+1 cc to Mr.J.Chandran Advocate sr9981
+1 cc to Mr.P.Mani Advocate sr9395

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