

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 814 of 2017

Arumugam

.. Petitioner /Appellant

Vs.

1.Karunanidhi

2.The Regional Manager,
United India Insurance Co. Ltd.,
46, Katpady Salai,
Vellore.

.. Respondent/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 20.12.2006, made in M.C.O.P. No. 480 of 2005, on the file of the Additional Sub Court, (Motor Accident Claims Tribunal), Tiruvannamalai.

For Appellant : Mr. F. Terry Chellaraja

For Respondents: No appearance (For R1)

Mr. D. Bhaskaran (For R2)

J U D G M E N T

This appeal has been filed seeking enhancement of the compensation granted by the award dated 20.12.2006, made in M.C.O.P. No. 480 of 2005, on the file of the Additional Sub Court, (Motor Accident Claims Tribunal), Tiruvannamalai.

2.The appellant is the claimant in M.C.O.P. No. 480 of 2005, on the file of the Additional Sub Court, (Motor Accident Claims Tribunal), Tiruvannamalai. He filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.11.2004.

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, as insurer of the vehicle, to pay a sum of Rs.65,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 21.12.2006, made in M.C.O.P. No. 480 of 2005, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended that the appellant was working as a Coolie and was earning a sum of Rs.6,000/- per month. The Tribunal erroneously fixed a meagre sum of Rs.15,000/- per annum as income of the appellant. In the accident, the appellant suffered crush injury in the right foot. He took treatment as in-patient in Jipmer Hospital, Pondicherry from 28.11.2004 to 06.01.2005. Tarsmetatarsal amputation was done on 28.11.2004 and underwent another surgery on 28.12.2004. He has produced Ex.P3 - Wound Certificate to prove the injuries sustained by him. The Tribunal without considering the disability assessed by P.W.2 - Doctor, reduced the same to 25%. The Tribunal has not awarded any amount towards transportation, extra nourishment, damages to clothes, mental agony, attendant charges and medical expenses. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of the same.

6.Per contra, the learned counsel appearing for the 2nd respondent contended that the Tribunal, considering the fact that P.W.2 - Doctor assessed the appellant after 1-¾ years and in the absence of any valid reason for the delay in assessment, rightly fixed the disability suffered by the appellant as 25%. Considering all the materials on record, the Tribunal has awarded compensation, which 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 due to the accident, he suffered crush injury in the right foot and took treatment as in-patient in Jipmer Hospital, Pondicherry from

28.11.2004 to 06.01.2005. He underwent Tarsmetatarsal Amputation on 28.11.2004 and another surgery was done on 28.12.2004. P.W.2 - Doctor assessed the percentage of disability suffered by the appellant as 45% and issued disability certificate, which is marked as Ex.P9. The Tribunal reduced the percentage of disability to 25%, based on the cross-examination of P.W.2-Doctor and considering the fact that P.W.2-Doctor assessed the appellant after one year and 8 months. The said reasoning given by the Tribunal for reducing the percentage of disability is not correct. The appellant is entitled to get compensation for 45% disability.

8(a) At the time of accident, the appellant was working as a Coolie and was earning a sum of Rs.6,000/- per month. The appellant has not substantiated the same. The Tribunal has fixed a meagre sum of Rs.15,000/- per annum as income of the appellant. The accident is of the year 2004. In the absence of any material evidence to prove the avocation and income of the appellant, a sum of Rs.3,500/- per month is fixed as the notional income of the appellant. The Tribunal has awarded a sum of Rs.60,000/- towards loss of income to the appellant. From the award of the Tribunal, it is not clear as to how the Tribunal has arrived at a sum of Rs.60,000/- towards loss of income. The appellant was aged 38 years at the time of accident. The correct multiplier applicable is '15'. Thus, the amounts awarded by the Tribunal towards loss of income is enhanced to Rs.2,83,500/- [$\text{Rs.3,500/-} \times 12 \times 15 \times 45\%$]. The Tribunal has awarded a meagre sum of Rs.5,000/- towards pain and suffering. Considering the nature of injuries, the same is enhanced to Rs.20,000/-. The Tribunal has not awarded any amount towards transportation, extra nourishment, loss of amenities, damages to clothes and attendant charges. Considering the period of treatment taken by the appellant and the nature of injuries suffered, a sum of Rs.20,000/- is awarded towards loss of amenities, Rs.15,000/- towards extra nourishment, Rs.10,000/- towards attendant charges, Rs.5,000/- towards transportation expenses and Rs.1,000/- towards loss of cloth. 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	60,000/-	2,83,500/-	Enhanced

2.	Pain and suffering	5,000/-	20,000/-	Enhanced
3.	Loss of amenities	-	20,000/-	Granted
4.	Extra nourishment	-	15,000/-	Granted
5.	Attendant charges	-	10,000/-	Granted
6.	Transportation	-	5,000/-	Granted
7.	Loss of clothes	-	1,000/-	Granted
	Total	65,000/-	3,54,500/-	Enhanced by Rs.2,89,500/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.65,000/- is enhanced to Rs.3,54,500/- along with interest and costs. The 2nd respondent is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 480 of 2005. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.2,89,500/-, enhanced by this Court as per the order of this Court dated 22.02.2017, made in M.P. No. 1 of 2012 in C.M.A. SR. 85870 of 2011. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.2,89,500/-. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Section Officer,
V.R Section,
High Court, Madras.

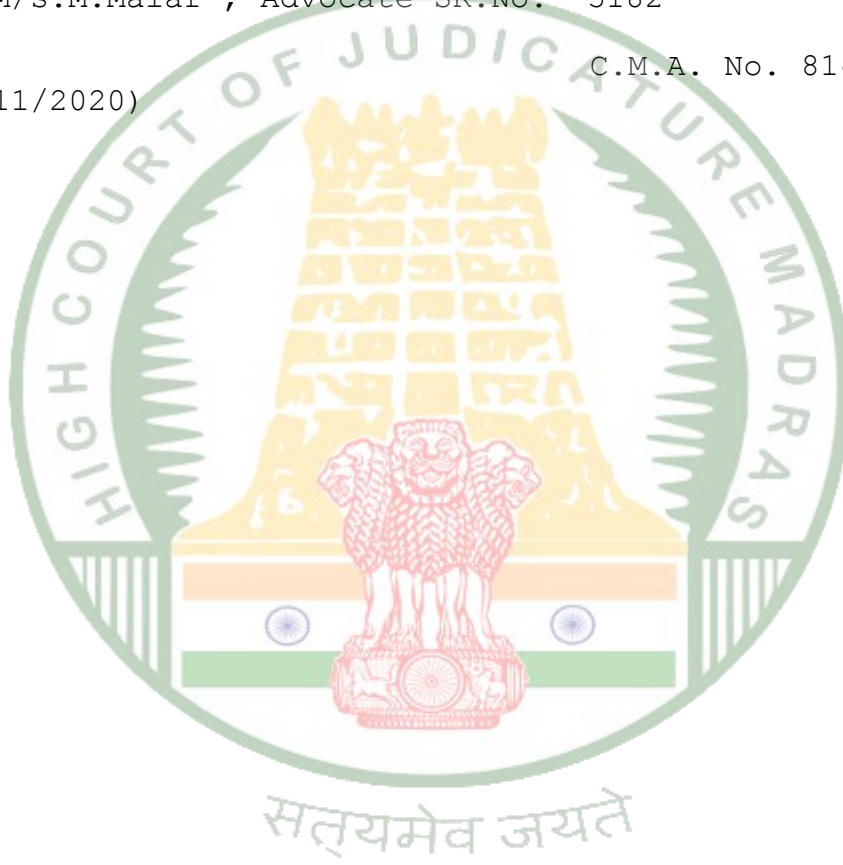
2.The Additional Subordinate Judge,
(Motor Accident Claims Tribunal),
Tiruvannamalai.

+lcc to Mr. D.Bhasakaran, Advocate SR.No. 5164

+lcc to M/s.M.Malar , Advocate SR.No. 5182

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A.SK(24/11/2020)



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