

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4745 of 2019

K.Annadurai

.. Appellant

Vs.

1.R.Balamurgan

2.National Insurance Company Ltd.,
No.110, Jawaharlal Nehru Salai,
Pondicherry, rep. By its
Divisional Manager.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 02.11.2018 made in M.C.O.P.No.10 of 2016 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Tittagudi (FAC).

For Appellant : Mr.S.Udayakumar

For R2 : Mrs.N.B.Sureka

For R1 : Ex-parte before Tribunal

JUDGMENT

This Civil Miscellaneous Appeal has been filed seeking enhancement of compensation of the award dated 02.11.2018 made in M.C.O.P.No.10 of 2016 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Tittagudi (FAC).

2.The appellant is claimant in M.C.O.P.No.10 of 2016 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Tittagudi (FAC). He filed the above claim petition claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident that took place on 03.09.2015.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the motorcycle

belonging to the first respondent and directed the second respondent/Insurance Company to pay a sum of Rs.25,000/- as compensation to the appellant/claimant at the first instance and recover the same from the first respondent/owner of the vehicle as the rider of the motorcycle did not possess valid driving licence at the time of accident.

4. Not being satisfied with the award amount granted by the Tribunal, the appellant/claimant has come out with the present appeal for enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the Tribunal erred in awarding only a meagre sum of Rs.25,000/- as compensation for the injuries sustained by the appellant/claimant. The appellant sustained injuries on his scalp cut injury, over left ear, right toe and lacerated injuries all over the body. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, Mrs. N.B. Sureka, learned counsel appearing for the second respondent-Insurance Company contended that the injuries sustained by the appellant are only simple in nature and the amount awarded by the Tribunal is excessive 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 and perused the materials available on record.

8. From the materials available on record, it is seen that the appellant/claimant has contended that he suffered multiple injuries and has taken treatment in Government Hospital, Vridhachalam from 03.09.2015 to 08.09.2015 as in-patient and to prove the same, Ex.P5/Accident Register Report and Ex.P10/Treatment Chit were marked. Further, he had taken treatment in Jipmer Hospital, Pondicherry. As per Ex.P6/Medical Records, he underwent plastic surgery in his left ear on 14.09.2015. He was a coolie worker and contended that at the time of accident he was earning a sum of Rs.15,000/- per month. The appellant has failed to produce any document to substantiate his claim. Therefore, in the absence of any material evidence to prove the income of the appellant a sum of Rs.10,000/- per month is fixed as the national income of the appellant. Due to the injuries and disability, the appellant would not have attended his work atleast for six months. Therefore, the appellant is entitled to a sum of Rs.60,000/- (Rs.10,000/- X 6) towards loss of income. The accident occurred in the year 2015 and the claimant was aged about 44 years at the time of accident. In view of the same, the Tribunal has awarded a consolidated sum of

Rs.25,000/- as compensation towards transportation, extra nourishment, cost of attendant, pain and sufferings and medical expenses. Considering the nature of the injuries sustained by the appellant/claimant, which are severe in nature, the appellant is entitled to compensation separately under these heads, viz., a sum of Rs.5,000/-, Rs.10,000/-, Rs.10,000/- and Rs.10,000/- towards transportation, extra nourishment, cost of attendant, pain and suffering & medical expenses respectively. 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	granted
2.	Transportation, extra nourishment, cost of attendant, pain and suffering & medical expenses	25,000	5,000 10,000 10,000 10,000	enhanced
	Total	Rs.25,000/-	Rs.95,000/-	enhanced by Rs.70,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from Rs.25,000/- to Rs.95,000/- with interest and costs. The second respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court together 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 first respondent/owner of the two wheeler, as directed by the Tribunal. The appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, after adjusting the amount, if any, already withdrawn. It is made clear that the appellant shall not be entitled for any interest for the delay period in filing the appeal on the amount of Rs.70,000/- enhanced by this Court as per the order of this Court dated 11.12.2019 made in C.M.P.No.25871 of 2019 in C.M.A.SR.No.147112 of 2019. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

gbi

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Tittagudi (FAC).

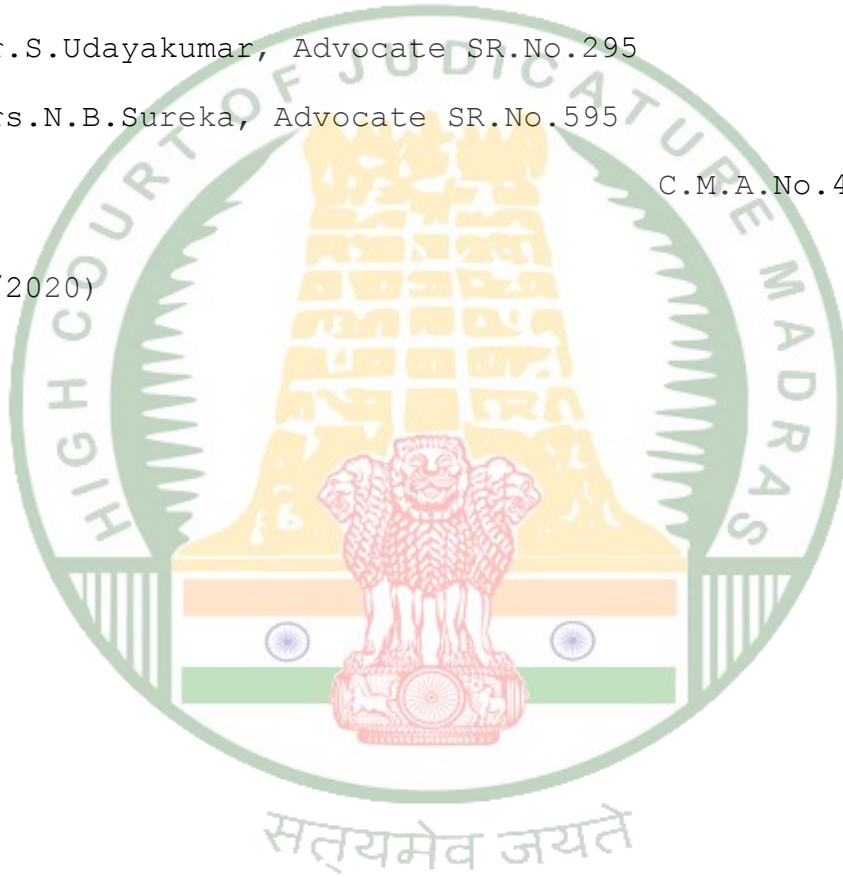
2.The Section Officer,
V.R.Section,
High Court,
Madras.

+1cc to Mr.S.Udayakumar, Advocate SR.No.295

+1cc to Mrs.N.B.Sureka, Advocate SR.No.595

C.M.A.No.4745 of 2019

CP(CO)
GMY(21/08/2020)



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