

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.03.2021

Pronounced on : 27.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2468 of 2011

Murugan
S/o.Krishnan

..Appellant

Vs.

1.R.Ravichandran
S/o.Ramamoorthy

2.The New India Assurance Company Limited,
Rep. by its Manager,
39-C, Bye-Pass Road,
Dharmapuri District.

..Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.02.2011 in M.C.O.P.No.889 of 2008 on the file of the Motor Accident Claims Tribunal, Principal Sub-ordinate Court, Krishnagiri.

For Appellant :: Mr.K.Prasanna

For R2 :: Mr.C.Ramesh Babu
M/s.A.Salomi

JUDGMENT

(The case has been heard through video conference)

The Civil Miscellaneous Appeal is filed by the claimant seeking enhancement of compensation granted by the Tribunal in the award dated 10.02.2011 in M.C.O.P.No.889 of 2008 on the file of the Motor Accident Claims Tribunal, Principal Sub-ordinate Court, Krishnagiri.

2.The appellant is claimant in M.C.O.P.No.889 of 2008 on the file of the Motor Accident Claims Tribunal, Principal Sub-ordinate Court, Krishnagiri. 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 02.05.2008.

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 JCP vehicle belonging to the 1st respondent and directed the 2nd respondent, being the insurer of the JCP vehicle to pay a sum of Rs.1,24,020/- as compensation to the appellant.

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

5. The learned counsel appearing for the appellant submitted his arguments. As per the submission of the learned counsel for the appellant, the claimant before the Motor Accident Claims Tribunal, Principal Sub-ordinate Court, Krishnagiri, in M.C.O.P.No.889 of 2008 was the claimant. As per the claim petition that on 02.05.2008, the claimant was interested to start a hotel and as a proprietor of that hotel, he purchased the vessels on 02.05.2008 and he was proceeding on the TVS Super XL vehicle bearing Registration No.TN-24-C-8506 to go to Guruparapalli to purchase the Dosai Kal. The claimant drove the motorcycle very slowly and carefully observing the rules of the road. On that day, while he was proceeding on the Krishnagiri to Hosur Road near Somanathapuram Road i.e., two furlong rest of Guruparapalli Police Station. At that time, the JCB Vehicle bearing Registration No.KA-01-Z-442 belonging to the first respondent and insured with the second respondent / Insurance Company was driven by its driver in a rash and

negligent manner without seeing the appellant. The said vehicle hit the appellant and he sustained multiple injuries. Immediately, he was taken to Government Hospital, Krishnagiri, and after the first aid, he was admitted to Arun Hospital, Krishnagiri where, he had undergone three surgeries on 02.05.2008 and 30.05.2008. Till the date of filing of claim petition he was under treatment.

6. On enquiry, the learned Tribunal had passed the award which is not in consonance with the spirit of the Motor Vehicles Act, in the principle of just and fair compensation. Aggrieved by the award, the claimant had preferred this appeal seeking enhancement.

7. The learned counsel for the 2nd respondent/Insurance Company submitted her arguments. As per her submissions, the Tribunal had properly assessed the evidence and accepted the documents marked on the side of the claimants. On proper appreciation of the same, just and fair award had been passed. The award does not need any interference by this Court. This appeal lacks merits and is liable to be dismissed.

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

9.Now the point for consideration is whether the claimant as appellant is entitled to enhancement of the compensation as prayed for by him?

POINT:

10.According to the appellant/claimant, he sustained grievous injuries. P.W.2/Doctor Ashok Kumar, had deposed that the injured sustained injuries on i) left Thigh swelling and Deformity, Shortening of Left leg, ii) abrasion Left leg 3x2 cm, iii) abrasion Right knee 4x3 cm, iv) deformity Right knee injury and multiple injuries all over the body, and he assessed the partial permanent disability at 50% with regard to fractured portion and 25% for entire body. However, while calculating the compensation under the head of partial permanent disability, the Tribunal had unfortunately awarded only a sum of Rs.50,000/- by adopting percentage method i.e., Rs.2,000/- per percentage of disability which in the opinion of this Court is incorrect and it has to be calculated by adopting multiplier method. Therefore, under the head

of partial permanent disability, the claimant is entitled to Rs.2,88,000/- (Rs.6,000/- X 12 X 16 X 25/100).

11.In this regard, the Tribunal fixed the monthly income of the claimant at Rs.3,000/- per month which is also liable to modify since the claimant was working as master in hotel (Chief Cook) and also earning from his agricultural source to a sum of Rs.10,000/- per month. In fact, on the fateful day, he purchased vessels to start a hotel and while proceeding to purchase dosai kal he was involved in the accident. Therefore, this Court feels it appropriate to fix the monthly income of the claimant at Rs.6,000/-. As regards the compensation under the head Transportation, Extra Nourishment, this Court is of the view that the compensation awarded by the Tribunal is very low and the same are modified as Rs.5,000/- and Rs.5,000/- towards Extra Nourishment. Due to the injuries and disability, the appellant would not have attended her work atleast for a period of six months. The Tribunal has awarded a sum of Rs.6,000/- (Rs.3,000/- X 2 months) towards loss of earning and the same is hereby enhanced to Rs.36,000/- (Rs.6,000/- X 6 months).

12.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.	Partial loss of earnings	6,000/-	36,000/-	Enhanced
2.	Transportation to hospital and extra nourishment	5,000/-	5,000/- 5,000/-	Enhanced
3.	Pain and sufferings	10,000/-	10,000/-	Confirmed
4.	Medical assistance	2,000/-	2,000/-	Confirmed
5.	Permanent disability	50,000/-	2,88,000/-	Enhanced
6.	Medical expenses	51,020/-	51,020/-	Confirmed
	Total	Rs.1,24,020/-	Rs.3,97,020/- (Rounded off to Rs.3,97,000/-)	enhanced by Rs.2,72,980/-

13. Accordingly, this Civil Miscellaneous Appeal is partly allowed. The second respondent/Insurance Company is directed to deposit the amount, which this Court determined in this appeal, to the credit of M.C.O.P.No.889 of 2008 on the file of the Motor Accident Claims Tribunal, Principal Sub-ordinate Court, Krishnagiri, with accrued interest at the rate of

6% per annum from the date of the claim petition till the date of deposit along with costs, through RTGS or NEFT method as held by this Court in *(The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others)* 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant shall be entitled to withdraw the award amount with accrued interest. The appellant is directed to pay appropriate Court fees within a period of two months from the date of receipt of copy of this judgment, failing which, he is not entitled to claim interest on the award amount. No costs.

27.04.2021

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Index : Yes / No

Internet : Yes/ No

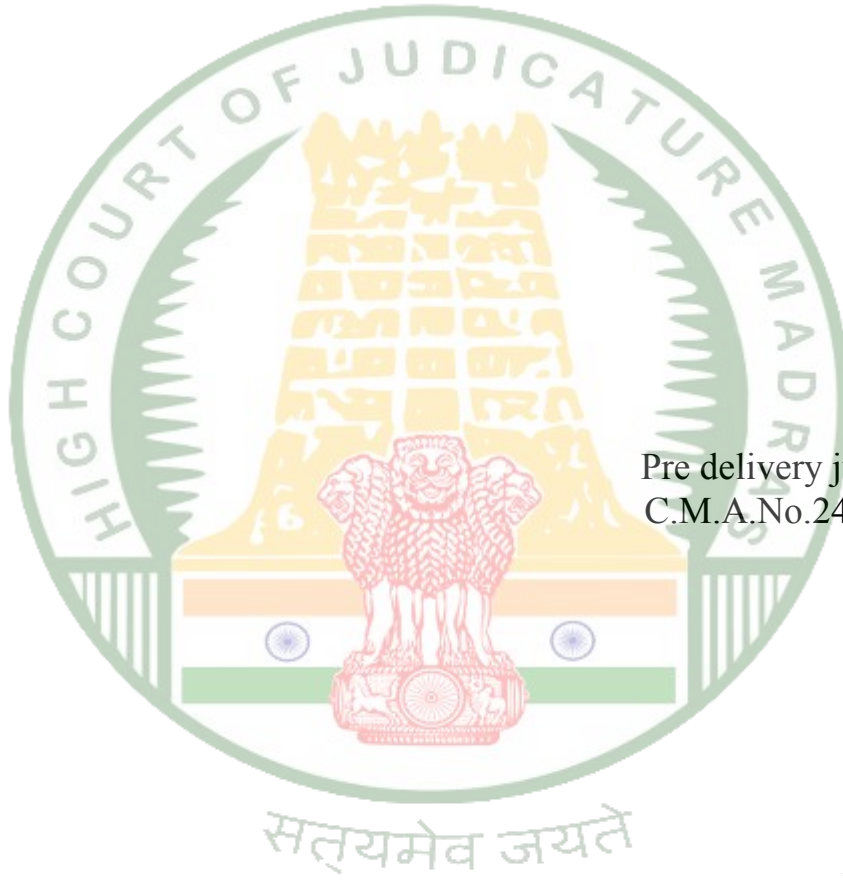
Speaking Order/Non-speaking Order

To

- 1.The Principal Sub-ordinate Judge,
Motor Accident Claims Tribunal,
Krishnagiri.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.

SATHI KUMAR SUKUMARA KURUP, J.

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Pre delivery judgment in
C.M.A.No.2468 of 2011

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