

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7.4.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA.No.1903 of 2011

Mani @ Manikandan

... Appellant

Versus

1.R.K.Jegan

2.New India Assurance Company Limited,
Third Party Motor Claims Officer,
No.46, Moore Street,
Chennai-600 001.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the judgement and decree dated 13.12.2004 and made in MACT.No.332 of 2003 on the file of the Motor Accident Claims Tribunal (Sub Court) Ponneri.

For Appellant : Mr.F.Terry Chellaraja

For Respondents : Mr.Neethiperumal for R2
R1-Exparte

JUDGMENT

The appeal has been preferred by the claimant aggrieved over the quantum of compensation, namely Rs.2,86,400/- awarded to him for the injuries sustained by him in the accident occurred on 30.9.2003.

2. Heard Mr.F.Terry Chellaraja, learned counsel appearing for the appellant and Mr.R.Neethiperumal, learned counsel appearing for the second respondent-insurance company.

3. It is seen from the records that the claimant sustained injuries in the leg leading to amputation of right foot below the knee. PW2-Doctor deposed that the claimant was run over by the offending vehicle causing injuries. PW2-Doctor based on the medical records and amputation of leg determined the disability at 70%. Even though, the Doctor deposed that the claimant sustained 70% disability, in the absence of any contra evidence, the Tribunal should not have re-determined the disability at 50%. Therefore, this

Court redetermines the disability at 70%. As the leg was amputated, the claimant cannot do his normal work and his profession of Tinkering work. The Tribunal taking into consideration of Rs.80/- per day determined the monthly income at Rs.2,400/-. However, the said income determined by the Tribunal is very low. Even as per the judgement in The New India Assurance Company Limited vs. Smt.Kalpna and Ors reported in MANU/SC/0498/2007 = (2007)3SCC 538, it has been held that in the absence of any material to show the income, the monthly contribution of a lady was determined at Rs.3000/- after deducting 1/3 towards personal expenses regarding the accident occurred in 1997. Therefore, following the said determination, this Court determines the income of the injured at Rs.4500/- per month and the loss of income is determined as follows: $Rs.4500 \times 12 \times 18 \times 70 / 100 = Rs.6,80,400/-$.

4. Each Rs.25,000/- awarded towards pain and suffering and extra nourishment are confirmed. Towards transportation the award amount is enhanced from Rs.5000/- to Rs.15000/-. Rs.1000/- awarded towards damage to cloth is confirmed. No amount was awarded towards loss of amenities. Therefore, a sum of Rs.30,000/- is awarded. Totally Rs.7,76,400/- is awarded rounded to Rs.7,76,000/- along with interest at 9% per annum.

5. The second respondent is directed to deposit the entire enhanced award amount along with interest and costs within four weeks from the date of the receipt of a copy of the order. The claimant is not entitled to interest for the period during which no appeal has been filed. On such deposit, the claimant is permitted to withdraw only Rs.3,00,000/- and the balance amount is directed to be deposited in an interest bearing fixed deposit in any one of the nationalized banks even atleast for the period of six years. The appellant is permitted to withdraw the accrued interest every two months once. The appeal is allowed with the above enhancement. No costs. The appellant is directed to pay the additional court fee within two weeks from the date of the receipt of a copy of the order.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

vk

To

1. The Motor Accident Claims Tribunal (Sub Court) Ponneri.

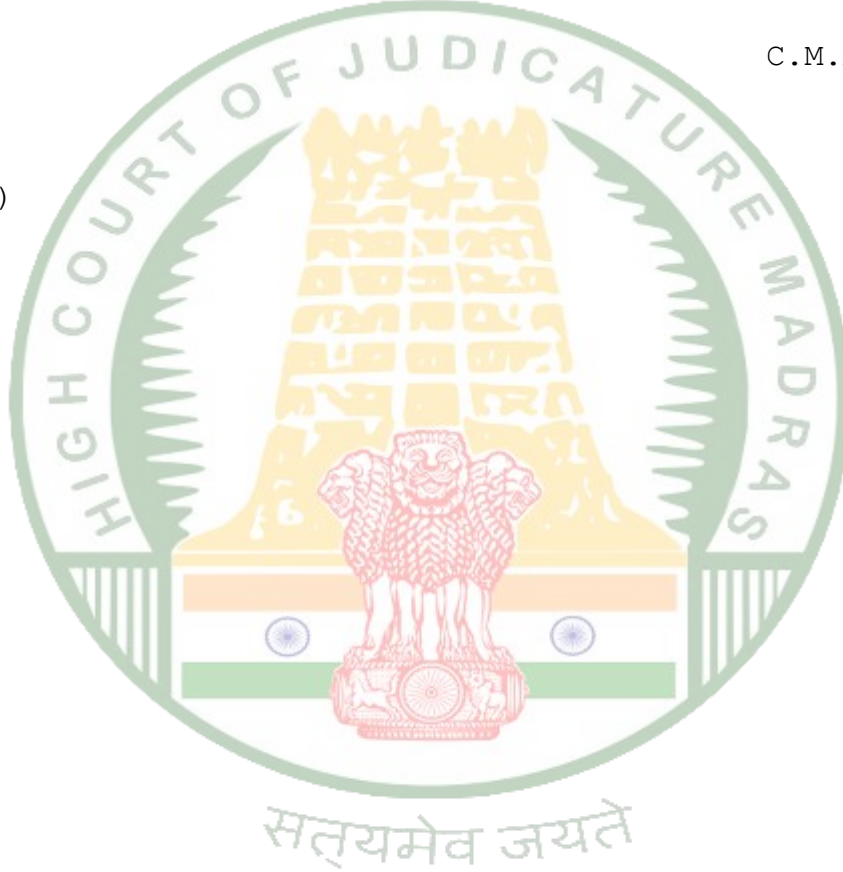
2. The Section officer
VR Section,
High Court, Madras

1 cc to Mr.R. Neethi Perumal, Advocate, Sr. 19611

1 cc to Mr.M. Malar, Advocate, Sr. 19138

C.M.A.No.1903 of 2011

CNR (CO)
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