

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2015

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A. No. 1597 of 2015

M. Babu

..Appellant/claimant

Vs.

1. M/s. Ruchi Health Foods Pvt. Ltd.,
No.40-41, East Madha Church Street,
Royapuram, Chennai - 13
(Since R1 remained ex parte before the Tribunal,
his presence may be dispensed with.)

2. New India Assurance Co.Ltd.,
First Floor, No.68,
Purasawakkam High Road,
Chennai - 600 007.
- ..Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 20.04.2012 passed in M.C.O.P. No. 393/2008 by the Motor Accidents Claims Tribunal (Sub Judge), Ponneri.

For Appellant :: Mr.F. Terry Chellaraja

For Respondents :: Mr.S. Manohar for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the claimant aggrieved over the quantum of Rs.10,20,000/- awarded as compensation by the Motor Accidents Claims Tribunal (Sub Court), Ponneri, in favour of the claimant/appellant for the injuries sustained by him in the accident, which occurred on 29.01.2008 in which he lost both his legs.

2. Heard Mr. F. Terry Chellaraja, learned counsel for the appellant and Mr. S. Manohar, learned counsel for the 2nd respondent.

3. The only question to be decided is with regard to the quantum of compensation as the Insurance Company has not challenged the award on the ground of liability.

4. The case of the appellant, before the Tribunal, was that he was aged about 30 years and was working as a Tea Master, earning about Rs.250/- per day. The Tribunal, based on P.W.2, Doctor's evidence and taking note of the amputation of both legs and other medical records, namely, Ex-P2, Discharge Summary, which shows that the claimant was treated as an inpatient from 29.01.2008 to 28.06.2008, for more than 5 months, Ex-P3, Treatment Record, which shows that he had taken further treatment from 03.08.2010 to 11.03.2011, Ex-P8, Disability Certificate, issued by the Department of Rehabilitation of the Disabled, Ex-P10, Disability Certificate issued by P.W.2 Doctor and Ex-P9, Medical Bills, rightly determined the disability at 100%.

5. The claimant can move about only by using a wheel chair and he cannot do any job on his own. Even for attending nature's call, he is dependent on his wife. Therefore, as rightly determined by the Tribunal, there is 100% loss of income and the same is confirmed.

6. The Tribunal took Rs.4,000/- as the monthly income eventhough the claimant stated that he was earning Rs.250/- per day. However, taking into consideration, the occurrence of the accident in the year 2008, this Court determines the monthly income at Rs.6,500/- and adds 50% towards "Future Prospects" and arrives at Rs.9,750/- as total monthly income, following the judgment of the Honourable Apex Court rendered in Syed Sadiq V. Divisional Manager, United India Insurance Co. Ltd reported in 2014 (1) TN MAC 459 (SC), wherein Rs.6,500/- was fixed as the monthly income for a vegetable vendor, who sustained injuries in the accident, which took place in 2008.

7. The Discharge Summary, Ex-P2, discloses the age of the claimant as 30 years and the multiplier applicable is 17 whereas the Tribunal erroneously adopted multiplier 16. Therefore, adopting the correct multiplier, namely, 17, "Loss of Income due to disability" is calculated as follows:

Loss of Income due to disability	::	Rs.9750 x 12 x 17
	::	Rs.19,89,000/-

8. The claimant sustained serious injuries, underwent two surgeries and was hospitalised for more than a year. Hence, the sum of Rs.1 lakh awarded towards "Pain and Suffering" is enhanced to Rs.2 lakhs. The amount awarded towards "Medical Expenses", namely, Rs.45,000/-, based on Ex-P9 Medical Bills, is confirmed. The sum of Rs.10,000/- awarded towards "Extra Nourishment" is low and the same is enhanced to Rs.50,000/-. So also, the amount awarded towards "Transport Expenses", to the tune of Rs.10,000/- is enhanced to Rs.50,000/-. The amount of Rs.7000/- awarded towards "Attendant Charges" is enhanced to Rs.1 lakh considering the period of hospitalisation of the appellant in the hospital for more than a year. As the appellant lost both his legs and he is unable to move about, except with the help of a wheel chair, on account of the accident, this Court awards Rs.2 lakhs towards "Loss of Amenities" enhancing the

amount of Rs.25,000/- awarded by the Tribunal. The sum of Rs.55,000/- awarded towards "Loss of Expectation of Life and Future Medical Expenses" is confirmed. Hence, the total compensation payable under various heads are as hereunder:

Loss of Income	::	Rs.19,89,000/-
Pain and Suffering	::	Rs. 2,00,000/-
Medical Expenses	::	Rs. 45,000/-
Extra Nourishment	::	Rs. 50,000/-
Transport Expenses	::	Rs. 50,000/-
Attendant Charges	::	Rs. 1,00,000/-
Loss of Amenities	::	Rs. 2,00,000/-

Loss of Expectation
of life and Future Medical
Expenses :: Rs. 55,000/-

Total :: Rs.26,89,000/-

In all, a sum of Rs. 26,89,000/- rounded off to Rs. 27 lakhs is payable as compensation to the appellant/claimant. The rate of interest awarded by the Tribunal at 7.5% per annum remains intact.

9. The 2nd respondent Insurance Company is directed to deposit the entire amount, as per the modified award passed by this Court, with interest and costs, after deducting the amount already deposited, if any, before the Tribunal, within a period of ten weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant is permitted to withdraw the entire amount within a period of one week thereafter. The appellant shall pay additional court-fee for the enhanced amount. Further, it is made clear that the appellant will not be entitled to any interest on the award amount for the period of delay of 895 days in filing the appeal as observed by this Court in M.P. No. 1 of 2015 in C.M.A. SR No. 55429 of 2015 by order dated 14.07.2015.

10. In the result, the Civil Miscellaneous Appeal is allowed and the award of the Tribunal, to the tune of Rs.10,20,000/- is enhanced to Rs.27 lakhs with interest @ 7.5% per annum. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

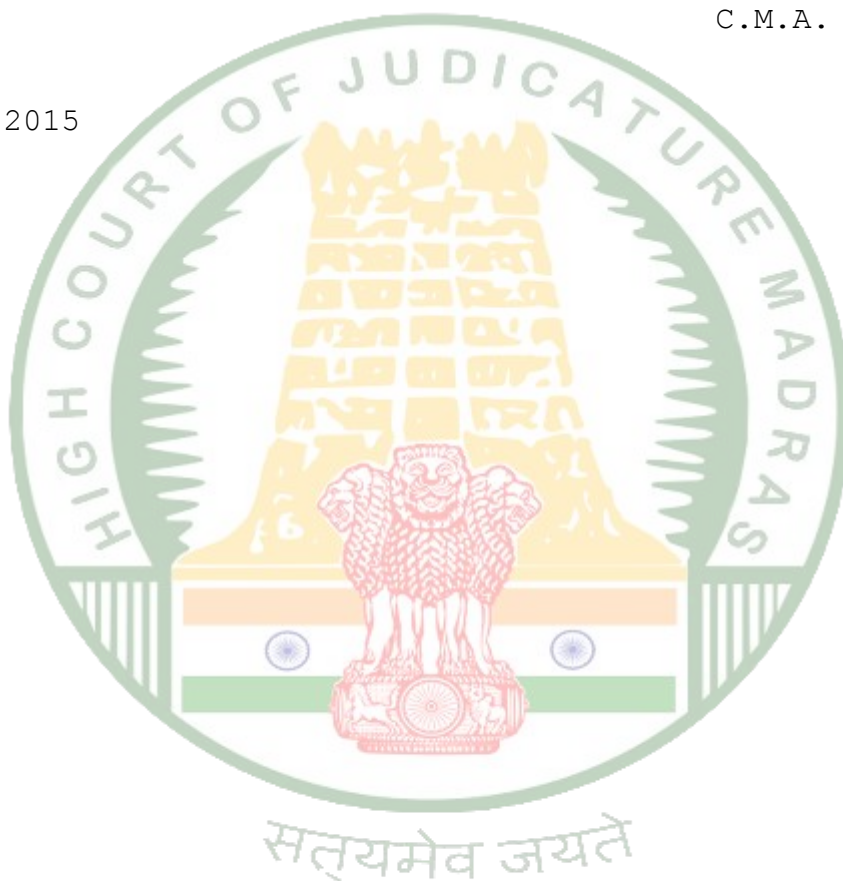
The Subordinate Judge
The MACT, Ponneri.

+1cc to M/s M. Malar Advocate SR.37525

+1cc to Mr. S. Manohar Advocate SR 37563

C.M.A. No. 1597 of 2015

VSN (CO)
RS 10.08.2015



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