

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.6.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA.No.918 of 2015

S.Ravichandran

... Appellant/Petitioner

Versus

1.V.Perumal

2.Bajaj Allianz General Insurance Co.Ltd.,
No.30, Vaithyaraman Street,
T.Nagar, Chennai-17.

... Respondents/Respondents

This civil Miscellaneous appeal is filed under Section 173 of the Motor Vehicles Act 1988 against the judgment and decree made in MCOP.No.4062 of 2009 dated 28.06.2012 on the file of the V-Small Causes Court, Chennai/Motor Accident Claims Tribunal Chennai.

For Appellant : Mr.Ponnusamy
M/s.Anand and Suryas
For Respondents : Mr.Srinivasa Ramalingam for R2

J U D G E M E N T

The claimant is before this Court aggrieved over the award of Rs.5,16,000/- as compensation for the injuries sustained by him in the accident occurred on 24.3.2009.

2. Heard Mr.Ponnusamy, representing M/s.Anand and Suryas, learned counsel appearing for the appellant and Mr.Srinivasa Ramalingam, learned counsel appearing for the second respondent.

3. The only question to be decided is with regard to the quantum of compensation.

4. A perusal of the records would show that the claimant sustained severely commuted compound fracture of lower end of right femur. He had undergone surgery on 25.3.2009 and external fixation was done, when he was admitted in the hospital on 24.3.2005. Again another surgery was done on 13.4.2009 for removal of the external fixator, open reduction and for stabilization with lateral condylar locking plate. The aforesaid injuries sustained by the claimant has been proved by the medical records, namely, Ex.P2,P3,P5,P8,P9,P16 and P17 etc.

5. Therefore, based on medical records, PW2 Doctor determined the disability at 45%, as fractured bones are malunited, pain and stiffness over right femur and knee, movements are restricted and the petitioner has got difficulty in walking fast, climbing steps, sitting cross legged and squatting. However, the Tribunal determined the disability at 20%. In the absence of any contra evidence, the Tribunal should not have determined the disability at 20%. In any event, this Court redetermines the disability at 30%, on re-appreciating the evidence.

5. Though the claimant claimed to have earned a sum of Rs.15,000/- per month, the Tribunal, in the absence of examination of author, who issued the salary certificate Ex.P10, rightly disbelieved the said certificate and determined the monthly income at Rs.7500/- per month. The said determination cannot be found fault with. As the claimant might have taken rest for five months, the Tribunal rightly awarded Rs.37,500/- towards loss of income during treatment. The Tribunal taking Rs.7500/- as monthly income, determined the loss of income at Rs.2,70,000/-. As this Court redetermined the disability at 30%, the loss of income is calculated as follows:

$$\text{Rs.7500} \times 12 \times 14 \times 30 = \text{Rs.3,78,000/-}$$

6. Rs.3,000/- awarded by the Tribunal is low and this court enhances Rs.10,000/- towards transportation. Similarly, Rs.10,000/- awarded towards extra nourishment is increased to Rs.25,000/-. The award of Rs.1,000/- towards damage to cloth and Rs.1,29,500/- towards medical expenses as per Ex.P8 is confirmed. Rs.20,000/- towards future medical expenses, Rs.10,000/- towards attender charges and Rs.35,000/- towards pain and suffering awarded by the Tribunal are confirmed.

7. The award of the Tribunal Rs.5,16,000/- is enhanced to Rs.6,08,500/-. This court modifies the award of the Tribunal to Rs.6,08,500 along with interest at 7.5% per annum. Appeal is allowed. No costs. The learned counsel appearing for the second respondent would submit that as per the award passed by the Tribunal, the entire award amount, has already been deposited. The second respondent is directed to deposit the enhanced award amount along with interest and costs within four weeks from the date of the receipt of a copy of the order. On such deposit, the appellant claimant is permitted to withdraw the entire award amount within one week thereafter. The appellant is directed to deposit additional court fee, if any to be paid.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

vk

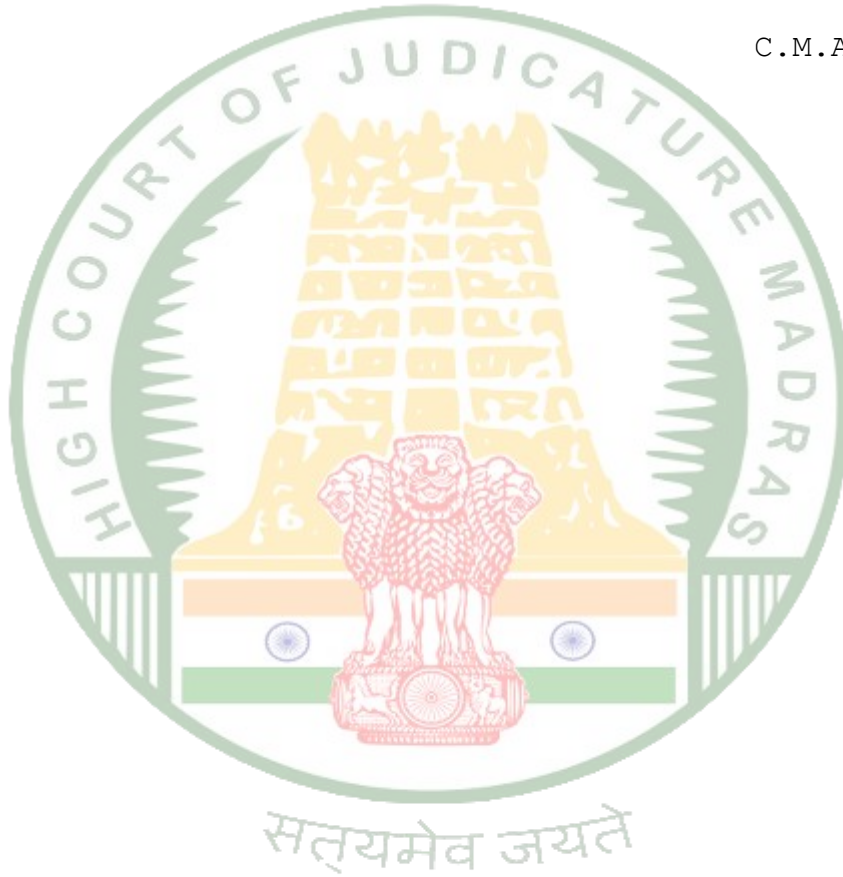
To

The V-Small Causes Court, Chennai
Motor Accident Claims Tribunal Chennai

+1cc to M/s. Anand & Suryas, Advocate, S.R.No.29666
+1cc to Mr.Srinivasan, Advocate, S.R.No.29438

RV(CO)
EU(15/07/2015)

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