

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.3.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA.No.2677 of 2015

The Branch Office,
M/s.Royal Sundaram Alliance Insurance Co.Ltd.,
4-A, 4th Floor, Thirumathi Towers,
No.723, Avanashi Road,
Coimbatore-641 018. Appellant/2nd Respondent

Versus

1.K.Murugan
2.Mr.C.Velumani ... Respondents/Petitioner 2nd Respondent

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the judgement and decree in M.C.O.P.No.212 of 2008 dated 02.09.2013 on the file of the Motor Accidents Claims Tribunal, Additional Special Court, Krishnagiri.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.Mukund R.Pandiyan for R1

JUDGMENT

The appeal has been preferred against the sum of Rs.6,60,234/- awarded by the Tribunal for the injuries sustained by the first respondent-claimant while he was riding his two wheeler, which was hit by the lorry insured with the appellant insurance company driven rash and negligently.

2. Heard Mr.N.Vijayaraghavan, learned counsel appearing for the appellant and Mr.Mukund R.Pandyan, learned counsel appearing for the first respondent.

3. The only point to be decided is with regard to quantum of compensation. This Court directed the first respondent to appear before this Court. This Court viewed the condition of the claimant, who sustained injuries in the right leg and he is unable to stand for a long time. The claimant underwent seven surgeries. The Tribunal, in the absence of any proof of income, took Rs.3500/- as monthly income and determined the disability at 85%. Applying multiplier-15, the Tribunal determined the loss of income at Rs.5,35,500/-. However, a perusal of the award would show that the claimant sustained the following injuries:

"1.A cut injury at the temporal scalp 4 x 21 cm
2.Cut injury at the Right eye brow 2 x 1 x 1 cm
3.Laceration of Rt.Lg. 6 cm x 4 cm x 1 cm ?
Fracture.
X-ray: Fracture of both bones right leg.
Opinion: injury No.3 is grievous and others are simple."

4. Ex.P4 would reveal the following injuries:
1.Tibia fracture compound Type-II with raw wound over the upper leg,
2.wound debridement was done,
3.sequestrectomy medial head of GN flap was done on 27.11.2007,
4.Bone grafting was done on 7.5.2008 and
5.Non union of bones.

Subsequently, as per Ex.P7, the claimant underwent surgeries by locking nailing of right leg fracture and by bone grafting, resultantly there is no movement in right leg joints. Therefore, again he underwent surgery of arthrolysis. The claimant cannot stretch nor bend fully his legs. He has to walk only with walking stick. PW2-Doctor deposed that the claimant sustained 85% disability. Because of 85% disability suffered by the claimant, he is unable to do his avocation as before. Therefore, there is 100% loss of earning power.

5. In the absence of any proof regarding income, the Tribunal took only Rs.3500/- per month. However, considering the date of accident i.e. on 26.8.2007, when it was very difficult to get a manual labour for the salary less than Rs.6500/- per month, this court fixes Rs.6500/- as monthly income including the future prospects and the said determination is in consonance with the dictum laid down by the Honourable Supreme Court in Syed Sadiq v. Divisional Manager, United India Insurance Co.Ltd. Reported in 2014 (1) TNMAC 459 (SC).

6. The claimant was aged about 35 years. As per Sarla Verma and others v. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 (SC), appropriate multiplier would be-14 and the loss of income is calculated as follows:
 $\text{Rs.}6500 \times 12 \times 14 = \text{Rs.}10,92,000/-$.

7. Rs.10,000/- awarded towards pain and suffering is too low. Considering the nature of injuries and the operation underwent by the claimant, the award towards pain and suffering is enhanced from Rs.10,000/- to Rs.50,000/-. Similarly Rs.15,000/- awarded towards nutritious food, transport and attender charges is too low and the same is enhanced to Rs.30,000/-. Rs.89,734/- awarded towards medical expenses as per Ex.P5 is confirmed. Rs.10,000/- awarded towards future medical expenses is enhanced to Rs.25,000/-. Rs.15,000/- is awarded towards loss of amenities. Totally a sum of Rs.13,01,734/- is awarded rounded to Rs.13,00,000/- along with 6% interest per annum.

8. Though the appeal has been filed by the Insurance Company against the award of Rs.6,60,234/-, seeing the condition of the claimant and also re-appreciation of evidence on records, this Court in an endeavour to award just and reasonable compensation, by invoking Order 41 Rule 33, enhances the compensation from Rs.6,60,234/- to Rs.13,00,000/- even in the absence of any appeal or cross appeal by the first respondent/claimant. Moreover, the provisions of the Motor Vehicles Act are beneficial in nature. This Court has got power and jurisdiction to enhance the compensation, as the appeal proceedings are in continuation of the original proceedings. The appeal is dismissed with the enhancement as stated above. The first respondent-claimant is directed to pay the necessary additional court fee.

9. The appellant is directed to deposit the entire modified 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 first respondent- claimant is permitted to withdraw only 50% of the deposited amount and the balance 50% amount shall be deposited in an interest bearing fixed deposit in any one of the nationalized banks, atleast for a period of six years. The first-respondent is permitted to withdraw the accrued interest every two months once. No costs. Consequently the connected M.P.No.1 of 2015 and M.P.No.1 of 2014 are closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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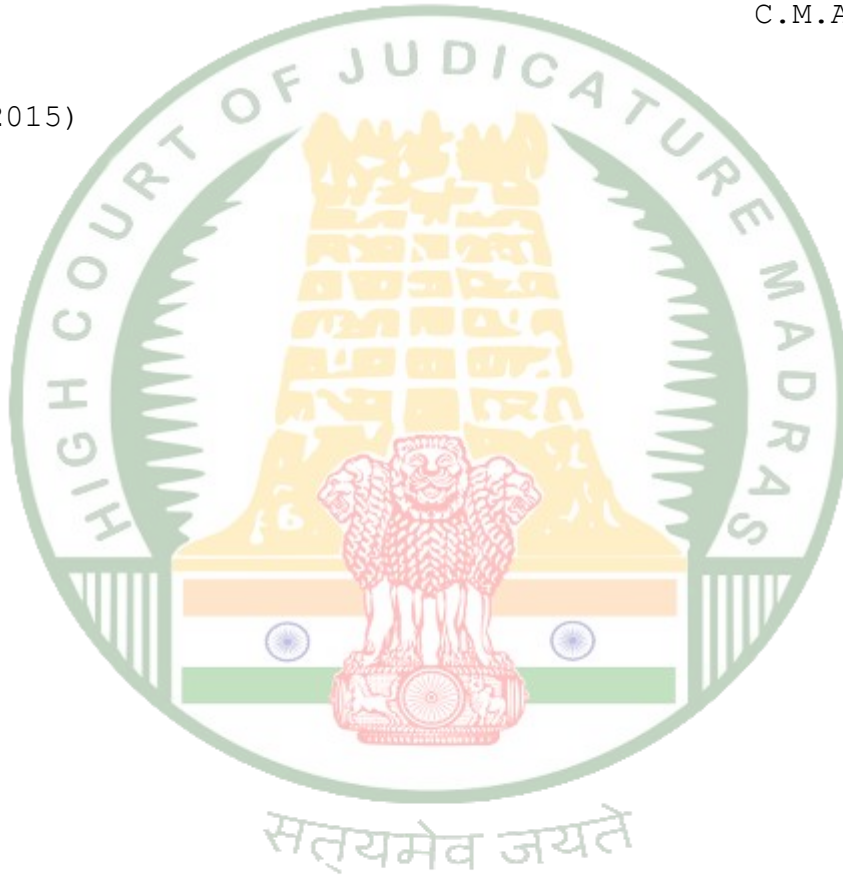
To

The Motor Accidents Claims Tribunal,
Additional Special Court,
Krishnagiri.

+lcc to Mr.N.Vijayaraghavan, Advocate, S.R.No.17190
+lcc to Mr.Mukund R.Pandiyan, Advocate, S.R.No.16793

C.M.A.No.2677 of 2014

UG(CO)
CA(29/04/2015)



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