

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:6.2.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA.No.1569 of 2003

S.Murugesan

...Appellant/Claimant

-Versus-

1. E.P.Krishnasamy

2. New India Assurance Co.Ltd.,
Amman Complex,
E.V.N.Road, Erode-638 011.

...Respondents/Respondent

This civil Miscellaneous appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgement and award of the learned Motor Accident Claims Tribunal (Principal Subordinate Judge) Erode in M.C.O.P.No.993 of 2001 dated 18.11.2002.

For Appellant : Mr.S.Kaithamalaikumaran

For Respondents : Mr.D.Venugopal for R2
R1- Exparte

J U D G E M E N T

The appeal has been preferred by the claimant not satisfied with the amount of Rs.2,26,000/- awarded by the Tribunal for 78% disability sustained by him, by the amputation of right leg below knee in the accident which occurred on 1.7.2001.

2. Heard the learned counsel appearing for the appellant as well as learned counsel for the second respondent. The only question to be decided is quantum of compensation. As the insurance company has not filed any appeal before this Court, the question of liability already attained finality.

3. The Tribunal, based on PW2 Doctor's evidence, considering the amputation of right leg below the knee and loss of movement sustained in the left hip resulting in inability to do day to day activities, determined the disability at 78%. As per the medical records, Ex.P5 wound certificate and Exs.P7 to P13, the said determination is justified.

4. Though the claimant sought Rs.4500/- as monthly income, the Tribunal determined only Rs.1500/- as monthly income. In the absence of any proof of income, the monthly income of Rs.1500/- determined by the Tribunal is too low and therefore, a sum of Rs.3000/- is redetermined as monthly income, which is in consonance with the judgement of the Hon'ble Supreme Court in The New India Assurance Company Limited vs. Smt.Kalpna and Ors reported in MANU/SC/0498/2007 = (2007)3SCC 538, wherein it has been held that in the absence of any material to show the income, the monthly contribution can be determined at Rs.3000/- after deducting 1/3 towards personal expenses. Since the claimant is 34 years, proper multiplier would be 16 and the loss of income is determined as follows:
$$\text{Rs.3000/-} \times 12 \times 16 \times 78/100 = \text{Rs.4,49,280/-}.$$

5. As per Ex.A9, medical bills, inspite of Rs.75,728/- was claimed towards medical expenses, the Tribunal only awarded Rs.60,000/- inclusive of future medical evidence for removing the plate, as no doctor was examined. That cannot be a criteria to determine the medical expenses. When duly issued medical bills are filed before this Court, the same have to be believed and amount has to be awarded. Therefore, this Court awards Rs.75,728/- towards medical expenses. Rs.5000/- awarded towards extra nourishment is too low and the same is enhanced to Rs.25,000/-. Similarly Rs.10,000/- awarded towards pain and suffering is enhanced to Rs.25,000/-. Rs.50,000/- awarded towards loss of income during treatment is confirmed. However, Rs.1,00,000/- awarded towards disability is deleted. Rs.1000/- awarded towards transportation is confirmed. Totally a sum of Rs.6,26,008/- is awarded rounded to Rs.6,26,000/-. The rate of interest 9% awarded by the Tribunal is confirmed. However, the enhanced compensation, will carry only 7.5% interest alone.

6. The second respondent is directed to deposit the entire award amount along with interest and costs as per the order of this court within six weeks from the date of the receipt of a copy of the order and on such deposit, the appellant claimant is permitted to withdraw the entire award amount. The appellant is directed to pay

appropriate court fee. Accordingly the appeal is disposed of. No costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
(Principal Subordinate Judge)
Erode.

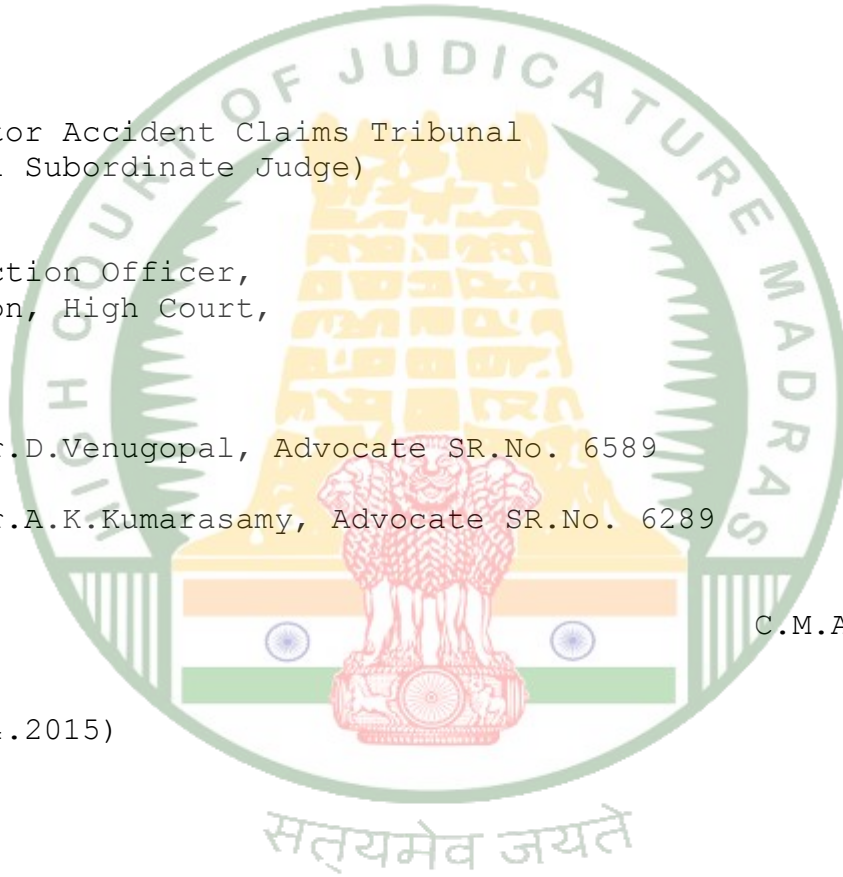
2. The Section Officer,
V.R.Section, High Court,
Madras.

1 CC to Mr.D.Venugopal, Advocate SR.No. 6589

1 CC to Mr.A.K.Kumarasamy, Advocate SR.No. 6289

C.M.A.No.1569 of 2003

KJI (CO)
PSI (01.04.2015)



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