

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2015

CORAM :

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

C.M.A. No.3563 of 2010

M.Ekambaram

...Appellant/Claimant

vs.

1.K.Velu

2.United India Insurance Co. Ltd.,
No.38, Anna Salai, Chennai-600 002
now having its office at
"Silingh Building", No.134,
Greens Road, Chennai-600 006. ...Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment made in M.C.O.P No.1981 of 2006 dated 10.12.2009 on the file of the Motor Accidents Claims Tribunal (II Judge, Small Causes Court), Chennai and to set aside the same.

For appellant : Mr. A.Shanmugaraj

For respondent : Mr. S.K. Krishnamurthy for R2
R1-Exparte

JUDGMENT

The Injured Claimant is the appellant herein. For the sake of convenience the parties are referred to as per their rank before the Tribunal.

2. This appeal is filed against the award of compensation of Rs.3,15,600/- against the total claim of Rs.10,00,000/-. The Tribunal, on the basis of the averments raised in the claim petition and on the basis of the oral evidence of the petitioner and his Doctor, who assessed his permanent disability, as PW-1 and PW-2 and by relying on the exhibits in Ex.P4 -G.H. OP Chit,

Ex.P5 -Scan Bill, Ex.P6 -Discharge Summary, Ex.P8 -Discharge Summary, Ex.P9 -OP Chit, Ex.P10 to 17 -Medical Bills, Prescriptions and Dr. fee receipts, found that the claimant was on the date of the accident PWD Building Contractor and was earning Rs.12,500/- per month and the injured sustained fracture of skull and concussion brain, fracture of right jaw, internal injury over chest and multiple injuries all over the body and he was given in-patient treatment on two spells at Appollo Hospital, Chennai from 27.08.2005 to 12.10.2005 (46 days) and 07.12.2005 to 15.12.2005 (9 days). Considering the nature of injuries and the fact that he has been continuously under treatment and he has to undergo future treatment as well and because of the injuries he has been undergoing severe pain and sufferings and he has sustained permanent disability and he is unable to stand or walk for a long time and he is unable to do his day to day work without any support and unable to chew hard food and he is getting frequent severe headache and giddiness and loss of memory and because of the accident and permanent disability sustained by him, he is not able to do any job and he lost his earning capacity and the family is suffering without any income. On the basis of the finding so rendered, the Tribunal awarded compensation of Rs.3,15,600/- under the following heads :

Sl. No.	Heads	Amount granted
1	Loss of earning during treatment	Rs. 10,000.00
2.	Transport Expenses	Rs. 5,000.00
3.	Extra Nourishment	Rs. 5,000.00
4.	Loss of estate damage to motorcycle	Rs. 10,000.00
5.	Medical Expenses	Rs. 1,65,600.00
6.	Future medical expenses	Rs. 40,000.00
7.	Pain and Sufferings	Rs. 10,000.00
8.	Permanent Disability	Rs. 70,000.00
	Total	Rs. 3,15,600.00

As against the Award, no appeal is filed by the United India Insurance Company Ltd./ the second respondent. The present appeal is filed by the claimant for enhancement of the compensation amount.

3. Heard the learned counsel for the appellant / claimant. There is no representation for the second respondent / Insurance Company.

4. According to the learned counsel for the appellant claimant, the amount awarded under the headings, as above stated, is too low and inadequate and the Tribunal while awarding compensation towards medical expenses had failed to take into account the medical bills produced under Ex.P11 to the tune of Rs.2,24,217/-. It is also his contention that, having regard to the nature of injuries, the extent of permanent disability and the functional disability, of the whole body and its impact on his ability to carry on the building contractor work, the claimant is entitled to get Rs.3000/- as compensation for each percentage of permanent disability sustained by him and also a just compensation for loss of future earning by applying multiplier method. According to the learned counsel for the appellant, the failure on the part of the Tribunal to award any amount for Attender Charges, loss of amenities and future loss of earning, is totally erroneous and is against the principles laid down by the Hon'ble Apex Court and our High Court. Learned counsel for the appellant has also, in support of his contention so raised herein, cited the following judgments :

- 1) V. Mekala vs. M. Malathi & anr., reported in 2014 (2) TN MAC 6 (SC)
- 2) S. Perumal vs. K. Ambika & Ors., reported in 2015 (1) TN MAC 337 (SC)
- 3) National Insurance Co. Ltd., rep. by its Branch Manager vs. G. Ramesh & P. Yoshuva reported in 2013 (2) TN MAC 583

5. Before going into the claim for enhancement, it is but necessary to go into the nature of injuries and the permanent disability sustained by the claimant and the impact of the same upon his avocation. The Tribunal has fixed his monthly income as a Building Contractor at Rs.10,000/- per month. As seen from the discharge summary issued by the Appollo Hospital, which is also explained by PW-2 Doctor, the claimant sustained multiple fractures on the left side of the skull and in mid brain and he underwent surgery for craniectomy and also acrylic cranioplasty. It is in the evidence of PW-2 Doctor that the appellant is frequently getting headache, giddiness, shivering on the legs, loss of memory and speech impairment and he is unable to walk fast. It is also stated by him that he had jaw fracture and he is unable to chew food. On the basis of the report of PW-2, the Tribunal rightly assessed the disability at 70% and as rightly pointed out by the learned counsel for the appellant, the Tribunal considering the nature of disability, instead of awarding lumpsum compensation for permanent disability of 70% ought to have awarded the compensation by applying multiplier method towards loss of earning and the functional disability can be, for the said purpose, fixed at 70%.

6. The claimant was on the date of the accident aged about 44 years and his earning was as PWD contractor fixed at Rs.10,000/- p.m. Considering the age, nature of the job, degree of permanent disability sustained by him and the impact on the same in carrying on his building contractor work as before, the loss of future earning can be by applying the multiplier method determined as follows : Age 45; monthly income Rs.10,000/-; multiplier to be adopted 15; functional disability 70% (loss of future earning = 10000 x 12 x 15 x 70/100 = Rs.12,60,000/-).

7. This Court finds merit and acceptance in the contention raised on the side of the claimant that because of the serious injuries sustained by him on the skull portion and the physical and mental ailment sustained by the claimant, the Tribunal ought to have awarded reasonable amount for loss of amenities. The claimant is also entitled to reasonable compensation under the headings loss of earning, extra nourishment, pain and sufferings and medical expenses on the basis of Ex.P11 medical bills. The claim for award of reasonable compensation for loss of amenities, attender charges and enhancement of compensation under other heads is also supported by the principles laid down by the Hon'ble Apex Court in the judgments above cited.

8. Considering the above factors, this Court is inclined to enhance the compensation as follows :

Sl. No.	Heads	Amount granted
1.	Loss of earning during treatment	Rs. 60,000.00
2.	Transport Expenses	Rs. 10,000.00
3.	Extra Nourishment	Rs. 20,000.00
4.	Damage to motorcycle	Rs. 10,000.00
5.	Medical Expenses	Rs. 2,25,000.00
6.	Future medical expenses	Rs. 50,000.00
7.	Pain and Sufferings	Rs. 1,00,000.00
8.	Loss of amenities	Rs. 50,000.00
9.	Future loss of earning	Rs. 12,60,000.00
10.	Attender charges	Rs. 10,000.00
	Total	Rs. 17,95,000.00

9. In the result, the Civil Miscellaneous Appeal is allowed and the enhanced compensation of Rs.17,95,000/- is payable with interest at 7.5% per annum from the date of claim petition till date of deposit and with costs. The appellant is directed to

pay additional court fee, if any. The Insurance Company is directed to deposit the entire award amount, with costs and proportionate interest at the rate of 7.5% after deducting the amount that has already been deposited by them, before the Tribunal, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit into Court, the appellant/claimant is permitted to withdraw the entire amount, on due cheque petition. No costs.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

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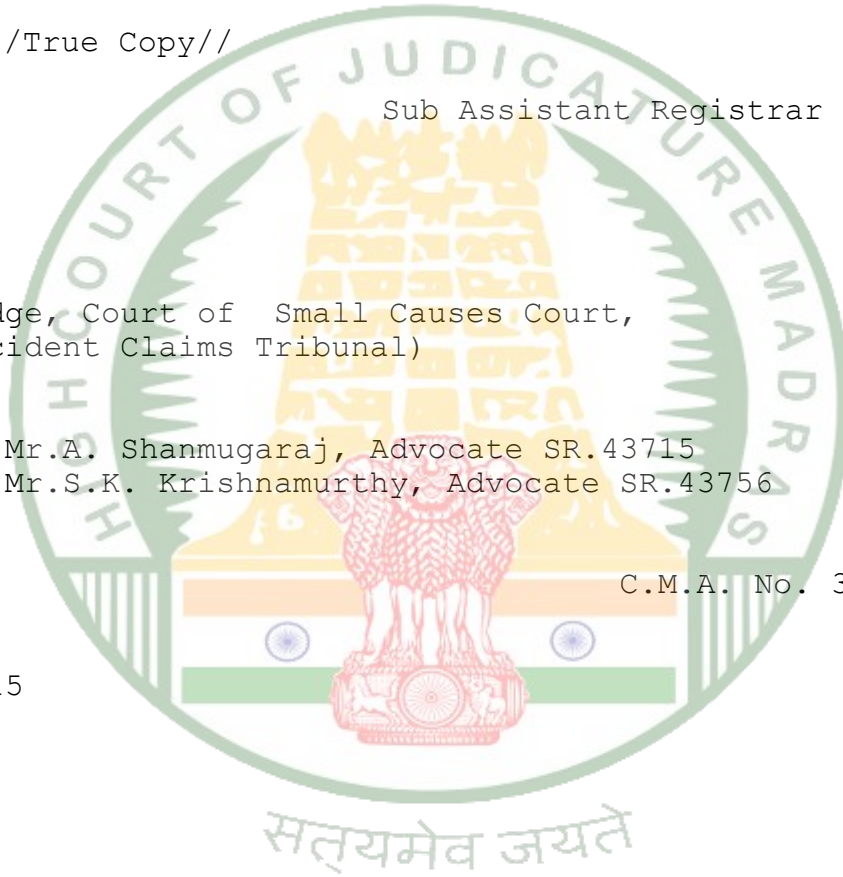
To

The II Judge, Court of Small Causes Court,
(Motor Accident Claims Tribunal)
Chennai.

+ 1 cc to Mr.A. Shanmugaraj, Advocate SR.43715
+ 1 cc to Mr.S.K. Krishnamurthy, Advocate SR.43756

C.M.A. No. 3563 of 2010

GR(CO)
Eu 29.10.15



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