

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 24.11.2016

Date of Verdict : 15.12.2016

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.134 of 1999
and CMP.No.15264 of 2005

R.Soundararajan ... Appellant/petitioner
... Vs ...

1. P.Shanmugam
2. The United India Insurance Co. Ltd.,
Motor Third Party Claims Officer,
38, Anna Salai,
Chennai-600 002. ... Respondents/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 02.07.1998 made in M.A.C.T.O.P.No. 3140 of 1995, on the file of the Motor Accidents Claims Tribunal (V Judge, Court of Small Causes), Madras.

For Appellant : Mr.J.Mahalingam
For Respondents : R1 - No appearance
Mr.P.Sukumar for R2.

JUDGMENT

This civil miscellaneous appeal is directed against the judgment and decree dated 02.07.1998 made in M.A.C.T.O.P.No. 3140 of 1995, on the file of the Motor Accidents Claims Tribunal (V Judge, Court of Small Causes), Chennai.

2. The brief facts of the case :- The appellant, as a claimant, has filed a claim petition in M.C.O.P.No.3140 of 1995 before the Motor Accidents Claims Tribunal (V Judge, Court of Small Causes) Chennai, along with evidence and documents. The Tribunal, after considering the evidence and hearing the arguments of both sides, passed the final decree directing the respondents to pay compensation of a sum of Rs.56,000/- (Rupees fifty six thousand only) together with an interest at the rate of 12% p.a. from the date of application to the date of payment. Aggrieved against the said award passed by the Tribunal, the present appeal is preferred by the appellant seeking enhancement of the claim.

3. The learned counsel for the petitioner would mainly contend that the Trial Court has not awarded proper compensation to the petitioner. The Trial Court, ought to have granted proper compensation by fixing the disability correctly. It is also contended that the Trial Court has not awarded proper compensation under the head pain and sufferings and hence the order of the Trial Court is liable to be set aside.

4. Elaborating his submission, the learned counsel appearing for the appellant/claimant would contend that as per the evidence of P.W.2 - Doctor, there was a bone fracture in the right leg of the appellant and he has taken treatment through a private hospital. During the course of treatment, bone grafting has been done and also a steel plate was fixed and the Doctor estimated the cost of the future surgery to remove the plate at Rs.25,000/-. The doctor fixed the disability at 25%. But the Tribunal, without considering the said fact has awarded only a meager sum of Rs.30,000/- towards medical expenses and future operation.

5. The learned counsel appearing for the appellant/claimant further contended that the Tribunal has erred in awarding a sum of Rs.20,000/- towards permanent disability and a meager sum of Rs.5,000/- towards pain and sufferings, a sum of Rs.500/- towards transport to hospital and a sum of Rs.500/- towards extra nourishment, totaling a sum of Rs.56,000/- towards compensation. Hence, the award amount has to be enhanced as claimed in the claim petition.

6. The learned counsel appearing for the respondent-Insurance company would contend that the Tribunal, after appreciating the evidence adduced on either side and after considering the evidence adduced by the Doctor, who has given the disability certificate, had properly allowed the application and correctly fixed the just and reasonable compensation of Rs.56,000/- and hence, there is no illegality or infirmity or perversity in the order passed by the Tribunal and hence, the order of the Tribunal has to be confirmed and the civil miscellaneous appeal has to be dismissed.

7. This Court heard the arguments of the both sides and perused the documents produced on both sides.

8. A perusal of the records shows that the Tribunal, after considering the evidence and documents had finally awarded compensation of Rs.56,000/- under the following heads:

Transport expenses	-	Rs. 500/-
Expenses for nourishments	-	Rs. 500/-
Medical and future		
operation expenses	-	Rs.30,000/-
Pain and sufferings	-	Rs. 5,000/-
Permanent disability (20%)	-	Rs.20,000/-
		<u>Rs.56,000/-</u>

8. Considering the facts and circumstances of the case and the injury suffered in the claimant viz., bone fracture in the right leg and the surgery done to him, the compensation awarded to the petitioner has to be enhanced as detailed below. The amount awarded by the Tribunal under the head of transport expenses is enhanced to Rs.1,000/- from Rs.500/-; the amount awarded under the head of extra nourishment is enhanced to Rs.1,000/- from Rs.500/-; the amount awarded under the head of medical expenses and future treatment is enhanced to Rs.45,000/- from Rs.30,000/-; the amount awarded under the head of pain and sufferings is enhanced to Rs.20,000/- from Rs.5,000/-; the amount awarded under the head of permanent disability is enhanced to Rs.25,000/- from Rs.20,000/-. Accordingly, the compensation payable would be as follows:-

Transport expenses	-	Rs. 1,000/-
Expenses for nourishments	-	Rs. 1,000/-
Medical and future		
operation expenses	-	Rs.45,000/-
Pain and sufferings	-	Rs.20,000/-
Permanent disability (20%)	-	Rs.25,000/-
		<u>Rs.92,000/-</u>

9. In the result, the Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal is enhanced to Rs.92,000/- from Rs.56,000/-. The respondent-Insurance company is directed to deposit the enhanced award amount of Rs.92,000/- with interest at 12% per annum, less the amount already

deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. The appellant/claimant is entitled to withdraw the amount deposited on due application. No costs.

s/d-
Assistant Registrar (CS-IV)

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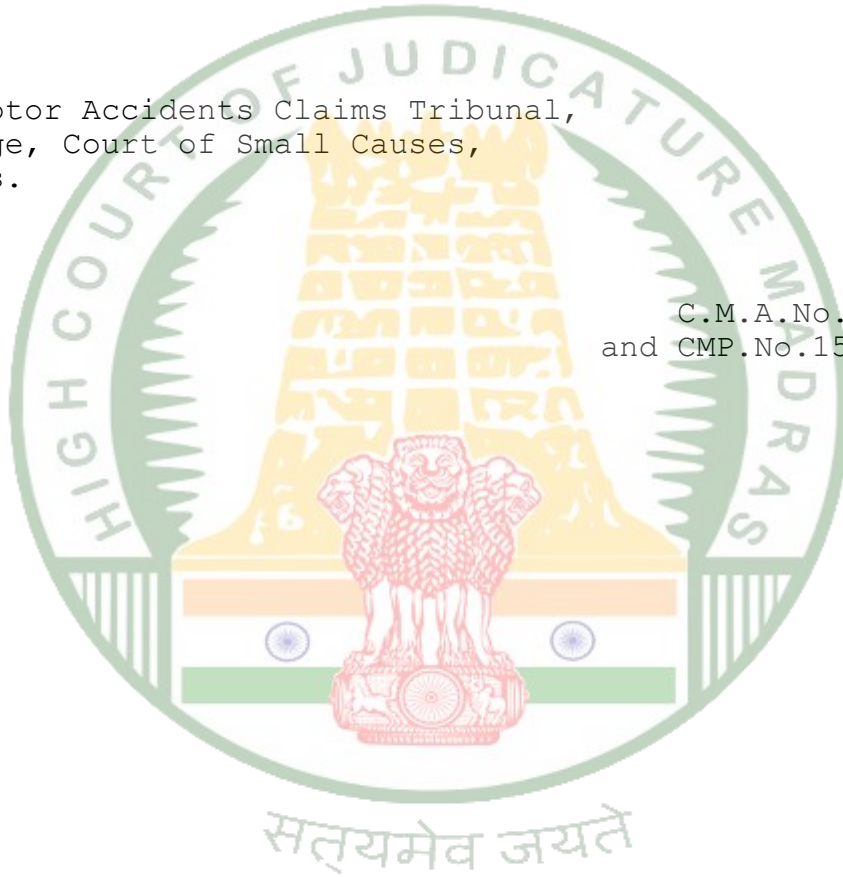
Sub-Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
V Judge, Court of Small Causes,
Madras.

C.M.A.No.134 of 1999
and CMP.No.15264 of 2005

RSY (CO)
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