

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2016

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.1276 of 2011

E.Settu

... Appellant/Petitioner

Vs.

1. N.T.R.Balasubramanian
(1st respondent remained ex-parte)
2. United India Insurance Co. Ltd.,
Branch Office at No.C-1,
Old No.C-52, First Main Road,
First Floor, Anna Nagar,
Chennai 600 102. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 01.12.2010 made in M.A.C.T.O.P No.4812 of 2007 on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr.R. Kalaiarasan
For 2nd Respondent : Mr.R.Vijay

J U D G M E N T

Aggrieved by the award passed by the Tribunal, the injured claimant has come up with this Appeal seeking enhancement of compensation.

2. Heard the learned counsel for the appellant/claimant and the learned counsel appearing for the 2nd respondent/Insurance Company.

3. In an accident which occurred on 12.06.2007, the claimant sustained injuries in his right femur, right hip and right hand. He filed a claim petition before the Tribunal seeking a sum of 7,00,000/- as compensation. The Tribunal, on consideration of the entire oral and documentary evidence, held that the driver of the offending vehicle was responsible for the accident and awarded a sum of Rs.1,27,000/- as compensation with

interest at 7.5% per annum. Details of the award are thus:

Heads	Amount
Temporary Loss of income	Rs. 9,000.00
Transport to Hospital	Rs. 1,000.00
Extra Nourishment	Rs. 3,000.00
Damage to clothing and Articles	Rs. 1,000.00
Private medicines purchased	Rs. 3,000.00
Pain and suffering	Rs. 20,000.00
Permanent disability	Rs. 90,000.00
Total	Rs.1,27,000.00

4. Learned counsel for the appellant/claimant contended that the Tribunal has awarded a meagre compensation without taking note of the age and injuries sustained by the claimant. Further stating that the claimant's right femur bone and right hip bone are malunited and that he has taken treatment as an inpatient and outpatient for one year, learned counsel contended that no amount has been awarded towards 'attendant charges' and 'mental agony'.

5. Though according to the appellant/claimant, he was an Agriculturist, earning a sum of Rs.7,500/- per month, the Tribunal fixed his notional income at Rs.3,000/- per month. Since the accident is of the year 2007, this Court finds no error in the fixation of the monthly income by the Tribunal. P.W.2, Doctor, who examined the claimant assessed his permanent disability at 45% and stated that the fractured right femur bones and right hip bone of the claimant are mal-united and that there is pain and stiffness in the right hip, hip movement is restricted due to which the claimant is limping and he has got difficulty in walking, climbing steps, squatting and also not possible to do any manual work.

6. Considering the nature of injuries sustained by the claimant and also taking note that he was aged 50 years at the time of accident, this Court is inclined to enhance the compensation awarded towards "Permanent Disability" by fixing a sum of Rs.3,000/- for each percentage of disability (45%) and accordingly, a sum of Rs.1,35,000/- is awarded towards the same.

Also, in view of the injuries sustained by the claimant, this Court enhances the compensation awarded towards 'Pain and suffering' from Rs.20,000/- to Rs.40,000/-.

7. A perusal of Ex.P2-Discharge Summary issued by Government Kilpauk Medical College Hospital, Chennai shows that the claimant was admitted on 12.06.2007 and discharged on 26.07.2007. It is clear that he had been in hospital for more than 40 days. But, no amount has been awarded towards 'Attender Charges' and 'Mental agony'. Hence, this Court feels it appropriate to award a sum of Rs.30,000/- towards 'Attender Charges' and a sum of Rs.75,000/- towards 'Mental Agony'.

8. Coming to the compensation awarded towards 'Temporary loss of income', certainly, the injured claimant, who is an Agriculturist, would not have been in a position to carry on his avocation for atleast six months, as he was hospitalised for more than 40 days. Hence, this Court enhances the compensation towards 'Temporary loss of income' as Rs.18,000/- (Rs.3000/- x 6), i.e. for a period of six months. That apart, in view of this Court, it is appropriate to enhance the compensation towards 'Transportation charges' and 'Extra nourishment' as Rs.5,000/- and Rs.10,000/-, respectively. The compensation awarded towards 'Damages to clothing and articles' and 'Purchase of private medicines' are confirmed, as they are just and reasonable.

9. In fine, the quantum of compensation of a sum of Rs.1,27,000/- awarded by the Tribunal is enhanced and the appellant/claimant is entitled to a sum of Rs.3,17,000/- (Rupees Three Lakhs Seventeen Thousand only) as compensation. The interest fixed by the Tribunal at 7.5% per annum from the date of filing the claim petition till the date of deposit is confirmed. Break-up details of the revised award are as under:

Heads	Amount awarded by the Tribunal	Amount awarded by this Court
Temporary Loss of income	Rs. 9,000.00	Rs. 18,000.00
Transport to Hospital	Rs. 1,000.00	Rs. 5,000.00
Extra Nourishment	Rs. 3,000.00	Rs. 10,000.00
Damage to clothing and Articles	Rs. 1,000.00	Rs. 1,000.00

Heads	Amount awarded by the Tribunal	Amount awarded by this Court
Private medicines purchased	Rs. 3,000.00	Rs. 3,000.00
Pain and suffering	Rs. 20,000.00	Rs. 40,000.00
Permanent disability	Rs. 90,000.00	Rs.1,35,000.00
Attender charges	-	Rs. 30,000.00
Mental agony	-	Rs. 75,000.00
Total	Rs.1,27,000.00	Rs.3,17,000.00

10. The 2nd respondent/Insurance Company is directed to deposit the entire award passed by this Court along with accrued interest to the credit of M.C.O.P.No.4812 of 2007 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai, within a period of six (6) weeks from the date of receipt a copy of this judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the amount, as per the award of this Court. It is also made clear that the award amount shall be paid to the appellant/claimant by the Tribunal in the form of a crossed Account Payee Cheque, favouring only the appellant/claimant and it should not be issued in favour of any other person/Company. Since the compensation has now been enhanced, the appellant/claimant shall pay necessary court fee, if any.

The Civil Miscellaneous Appeal is allowed with the above direction and observation. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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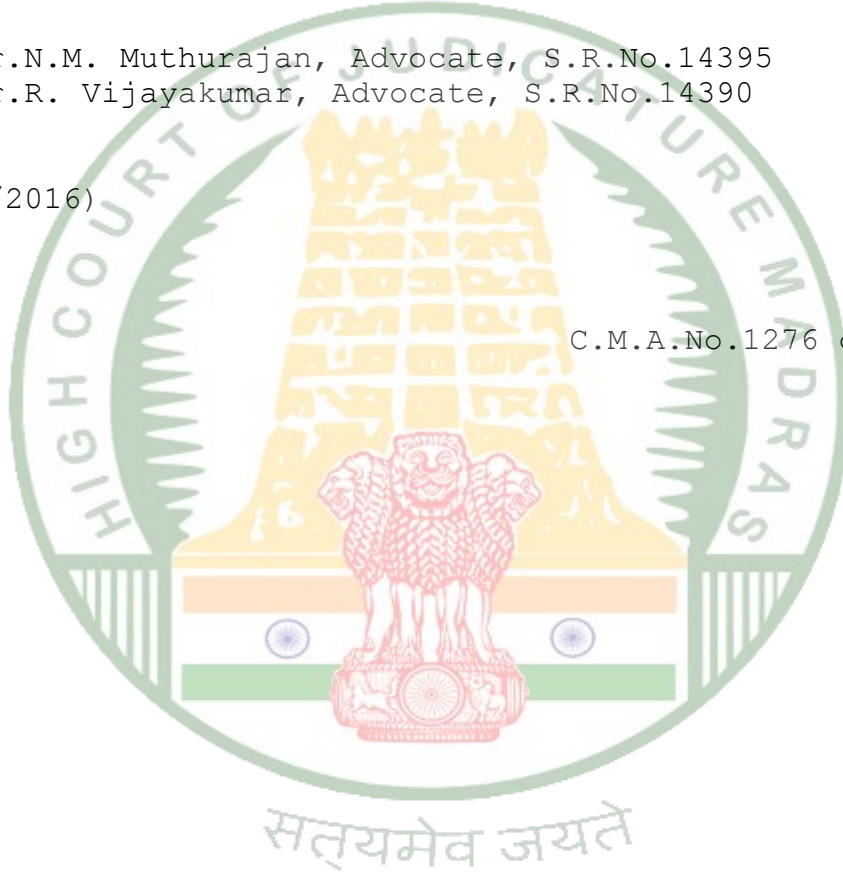
To :
The Registrar
The V Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.

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The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr.N.M. Muthurajan, Advocate, S.R.No.14395
+1cc to Mr.R. Vijayakumar, Advocate, S.R.No.14390

GJ (CO)
md (10/11/2016)

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