

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.1908 of 2011

J.Zakir Hussian

.. Appellant/ Petitioner

Versus

1.V.Balakrishnan

2.IFFCO - TOKIO General Insurance Company Ltd.,
No.128, Habibullah Road,
T.Nagar, Chennai-17. .. Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 30.12.2008 made in M.C.O.P. No.4150/2003 on the file of the Motor Accidents Claims Tribunal (V Small Causes Court), Chennai.

For Appellant : Mr.K.R.Ponnusamy for
M/s.Anand and Suryas

For respondents: Mr.N.Vijayaraghavan for R2
R1-Exparte

J U D G M E N T

The Civil Miscellaneous Appeal has been directed against the impugned award dated 30.12.2008 made in M.C.O.P. No.4150/2003 on the file of the Motor Accidents Claims Tribunal (V Small Causes Court), Chennai.

2.The case of the claimant is that on 28.03.2003 by 20.30 hours, on V.N.Road, when the claimant was riding his two wheeler, bearing Registration No.TN-01-P-7355, after filling up the fuel from Bharath Petroleum Bank and was proceeding from North to East direction, a Toyota Qualis Car, bearing Registration No.TN-09-AA-5652, driven by its driver in a rash and negligent manner and suddenly turned the vehicle with the same speed towards northern side to enter into the aforesaid petrol Bunk. In this process, the driver of the car lost the control over the vehicle and hit the claimant's two wheeler. Due

to the same, he was thrown away from his two wheeler. As a result, he sustained grievous and multiple injuries all over the body due to the fault of the driver of the car. According to him, the accident had occurred due to rash and negligent manner of the driver of the car.

3.Learned counsel appearing for the appellant/claimant would submit that the learned Tribunal has grossly erred in fixing Rs.3,000/- per month as the income of the claimant, though he was able to prove that he was earning a sum of Rs.200/- per day on the basis of evidence produced before the learned Tribunal. Therefore, it was contended by the learned counsel for the appellant/claimant that Rs.200/- should be taken as daily income for the purpose of computation of the compensation. He would submit that when the appellant/claimant had suffered multiple injuries and fractures on both bones left leg and for which he has proved that he has undergone treatment as inpatient from 28.03.2003 to 07.05.2003 in Government Stanley Hospital, as per discharge summary marked as Ex.P4, issued by the said Government Stanley Hospital, learned Tribunal after accepting the disability certificate, which was marked as Ex.P8, certifying that the appellant/claimant suffered 45% permanent disability, instead of fixing Rs.1,200/- per percentage of disability, should have fixed a reasonable sum. Adding further, he would submit that this Court has settled the issue on the question of fixing the disability at Rs.3,000/- per percentage of disability in the case of National Insurance Company Limited v. G.Ramesh reported in 2013 (2) TNMAC 583 (Madras) and therefore he prays for applying Rs.3,000/- per percentage of disability in the present case also. With regard to the head 'pain and suffering', learned counsel for the appellant/claimant would submit that the Tribunal has awarded a meagre compensation of Rs.5,000/- under the above mentioned head and hence he prays for enhancement.

4.Heard the learned counsel for the appellant/claimant and the learned counsel for the second respondent/Insurance Company.

5.Admittedly, the appellant/claimant, after sustaining multiple injuries and also the fracture of both bones left leg, had undergone treatment as inpatient from 28.03.2003 to 07.05.2003 and on 29.04.2003, he has undergone an operation in the Government Stanley Hospital at Chennai. Ex.P4/discharge summary marked by the claimant/appellant along with Ex.P5/X-ray clearly show that he was taking treatment for a period of 41 days in the said Government Stanley Hospital. Since the disability certificate issued by Dr.N.Saichandran, who was deposed as P.W.2, clearly shows that the disability suffered by the claimant is partial and permanent by 45%, this Court has no hesitation to fix Rs.3,000/- per percentage of disability, as per ratio laid down by this Court in the case of National

Insurance Company Limited v. G.Ramesh reported in 2013 (2) TNMAC 583 (Madras). Considering the fact that he was taking treatment as inpatient for more than 41 days in the said Government Stanley Hospital at Chennai and also considering the fact that he should have sustained considerable pain and suffering, Rs.54,000/- towards permanent disability and Rs.5,000/- towards pain and suffering, awarded by the Tribunal is liable to be modified. Accordingly, Rs.1,35,000/- (Rs.3,000x45) is fixed towards permanent disability as per the above said judgment and Rs.10,000/- is fixed towards pain and suffering. The compensation awarded by the Tribunal under the other heads are confirmed as it is. Accordingly, Rs.1,75,000/- is awarded towards total compensation. Resultantly, this appeal stands allowed.

6.Learned counsel appearing for the appellant/claimant submitted that the compensation awarded by the Tribunal has already been deposited by the Insurance Company and the same has also been withdrawn by the claimant.

***7.The Insurance Company/Second respondent is hereby directed to deposit the balance amount with interest at the rate of 7.5% per annum within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is open to the Claimant to move an application to withdraw the same. No costs. Consequently, connected M.P. Is closed**

Sd/-

Asst.Registrar (CS VII)

Dated:02/11/2016

*Corrected as per order dated 29.11.2016 and made in CMA No.1908/11

Sd/-

Asst.Registrar (CS VII)

Dated :23/12/2016

/true copy/

Sub Asst. Registrar

vga

To

1. The Registrar

Motor Accidents Claims Tribunal
(VSmall Causes Court), Chennai.

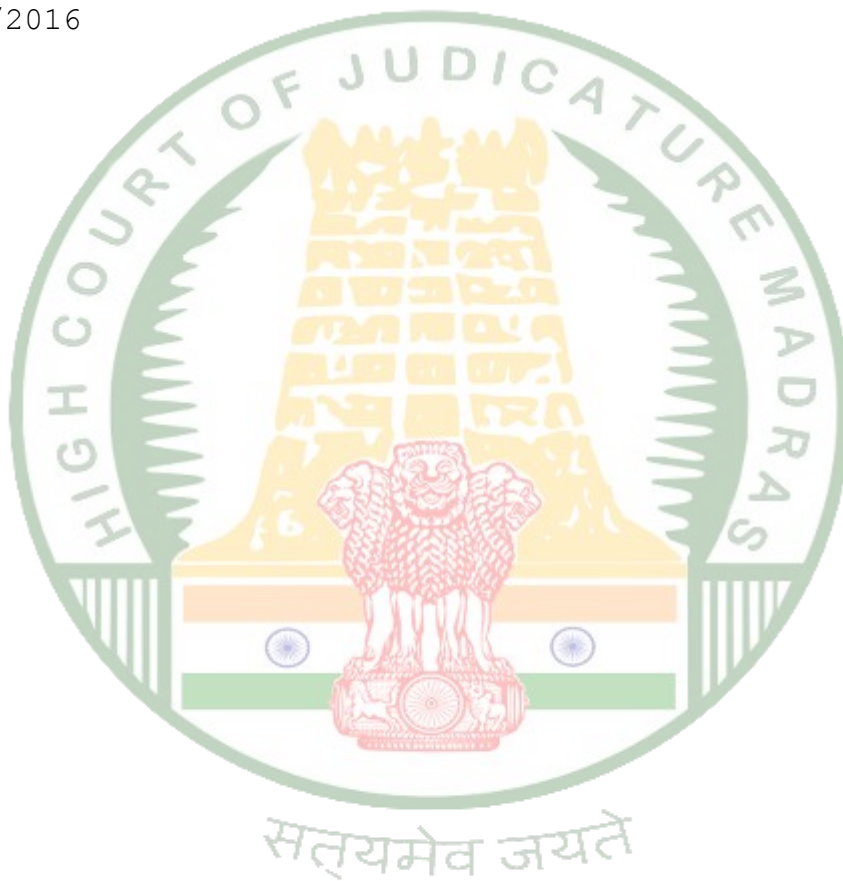
To be substituted to the order
Already despatched on 25.11.2016

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

1 cc to M/s. Anand and Suryas, Advocate, Sr. 51769

C.M.A. No.1908 of 2011

GJ (CO)
kk 11/10
srg 23/12/2016



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