

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.03.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A. NO. 3320 OF 2014

M.Salim .. Appellant/Claimant

- Vs -

1. Dr. N.V.Rammohan

2. ICICI Lombard General
Insurance Co.

Chotabhai Towers

No.140, Nungambakkam High Road

Chennai 600 006.

.. Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.04.2014, passed by the Motor Accident Claims Tribunal II Judge, Court of Small Causes, Chennai, made in MCOP No.3925 of 2013.

For Appellant : Mr. P.T.Salim Fathima

For Respondents: Mr. R.Sree Vidhya for R-2

R-1 - Set Exparte

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent.

2. The appellant/claimant has filed the appeal seeking enhancement of compensation by challenging the award dated 22.04.2014, passed by the II Judge, Motor Accident Claims Tribunal (Court of Small Causes), Chennai, made in MCOP No.3925 of 2013.

3. The brief facts of the case are as hereunder :-

On 03.06.2013, at about 07.30 hours, when the appellant/claimant Salim, aged about 40 years, was riding on his bicycle on the MKB Nagar overbridge, the car bearing Regn.

No.TN-05-AK-4054, driven by the first respondent herein, in a rash and negligent manner, coming in the opposite direction, dashed against the bicycle in which the claimant was riding and, thereby, the claimant suffered grievous injuries.

4. The claimant was working under a contractor and earning around Rs.15,000/= to Rs.17,500/= per month. The claimant filed a claim petition claiming a sum of Rs.67,00,000/= as compensation.

5. In support of the claim, the claimant examined himself as P.W.1, besides examining Dr.amarnath R.Sowlee and Tmt.Sakkina as P.Ws. 2 and 3.and Exs.P-1 to P-9 were marked, the details of which are as follows:-

Ex.P-1	-	Copy of FIR in Crime No.202/P1/2013 registered by G-3, Kilpauk Traffic Investigation
Ex.P-2	-	Discharge Summary
Ex.P-3	-	Outpatient chits
Ex.P-4	-	Discharge summary
Ex.P-5	-	Outpatient chits
Ex.P-6	-	Photo of the petitioner
Ex.P-7	-	C.D.
Ex.P-8	-	X-ray film
Ex.P-9	-	Disability Certificate

6. On the side of the respondents, while no witness was examined, Ex.R-1 was marked, the details of which is as follows:-

Ex.R-1	-	Copy of family card of the petitioner
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7. The Tribunal based on the oral evidence of the P.Ws.1 to 3, the F.I.R. and also taking note of the corroborating evidence of P.W.2, the doctor relating to disability of the petitioner and also taking into account the documentary evidence and further there being no satisfactory evidence adduced on behalf of the respondents to refute the testimony as to the rash and negligent driving of the driver of the car, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the car and, therefore, the liability was fixed on the appellant herein and consequently the appellant was directed to compensate the claimant. The Tribunal fixed the monthly income of the claimant at Rs.7,500/= and fixed the age of the claimant at 55 years and accordingly awarded compensation for permanent disability. Accordingly, the Tribunal awarded compensation under the following heads:-

Loss of Income for 6 months	-	Rs.45,000/=
Transportation	-	Rs.10,000/=
Extra Nourishment	-	Rs.10,000/=
Damage to clothes	-	Rs.1,000/=
Medical Expenses	-	Rs.10,000/=
Future Medical Expenses	-	Rs.2,00,000/=
Loss of amenities of life	-	Rs.2,00,000/=
Mental agony to the petitioner	-	Rs.2,00,000/=
Pain & Suffering	-	Rs.2,00,000/=
Permanent Disability (Rs.7,500 X 12 X 11 X 90%)	-	Rs.8,91,000/=
Total Compensation	-	Rs.17,67,000/=

8. In all the Tribunal awarded a compensation of Rs.17,67,000/= with interest at the rate of 7.5% from the date of claim petition till date of payment/deposit. However, aggrieved by the said award, the claimant is before this Court by filing the present appeal praying for enhanced compensation.

9. Learned counsel appearing for the claimant submits that the amount awarded by the Tribunal on many of the heads is on the lower side. It is further submitted by the learned counsel for the claimant that the income of the claimant has been fixed on the lower side, though it was submitted that the claimant was earning more than Rs.15,000/= per month. It is further submitted that the claimant has become a quadraplegic and is totally crippled and requires an attender. But no amount has been awarded towards attender charges. In fine, it is submitted by the learned counsel that the compensation awarded by the Tribunal needs to be enhanced keeping in mind the injuries suffered by the claimant.

10. This Court has given its careful consideration to the above contentions. A perusal of the award reveals that the Tribunal has gone in extenso on all the points and granted compensation on various heads taking note of the nature of injury and the consequential loss of income. Though the above plea for enhancement is made, however, this Court finds that the except on certain heads, where amounts have been awarded on the lower side, on the material heads of loss of income and permanent disability, etc., the amounts awarded by the Tribunal appears to be just and equitable. Insofar as the amount of Rs.10,000/= each awarded under the heads of "Extra Nourishment" and "Transportation", this Court finds that it would be just and reasonable to award a sum of Rs.25,000/= and Rs.15,000/= under the heads of "Extra Nourishment" and "Transportation".

Further, no amount has been awarded by the Tribunal towards attender charges. However, considering the nature of injury and the disability suffered by the claimant, this Court feels that Rs.25,000/= would be a fair amount under the head of "Attender Charges". Further, no interest has been awarded under the head "Future Medical Expenses" by the Tribunal. However, this Court, considering the entire gamut of facts as also the injuries suffered by the claimant, deems it fit that the amount awarded under the head of "Future Medical Expenses" would also carry interest @ 7.5% per annum. Accordingly, the award of the Tribunal is modified as hereunder :-

	Award of the Tribunal	Award passed by this Court
Loss of Income for 6 months	Rs.45,000/=	Rs.45,000/=
Transportation	Rs.10,000/=	Rs.15,000/=
Extra Nourishment	Rs.10,000/=	Rs.25,000/=
Damage to clothes	Rs.1,000/=	Rs.1,000/=
Medical Expenses	Rs.10,000/=	Rs.10,000/=
Future Medical Expenses	Rs.2,00,000/=	Rs.2,00,000/=
Loss of amenities of life	Rs.2,00,000/=	Rs.2,00,000/=
Mental agony to the petitioner	Rs.2,00,000/=	Rs.2,00,000/=
Pain & Suffering	Rs.2,00,000/=	Rs.2,00,000/=
Permanent Disability (Rs.7,500 X 12 X 11 X 90%)	Rs.8,91,000/=	Rs.8,91,000/=
Attender Charges	-	Rs.25,000/=
Total Compensation	Rs.17,67,000/=	Rs.18,12,000/=

11. Accordingly, this Civil Miscellaneous Appeal is disposed of with the above modification. The second respondent/insurance company is directed to deposit the amount of Rs.18,12,000/= with interest @ 7.5% on the entire amount to the credit of MCOP No.3925/2013, if not already deposited, and on such deposit, the appellant is permitted to withdraw the same. However, in the circumstances of the case, there shall be no order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

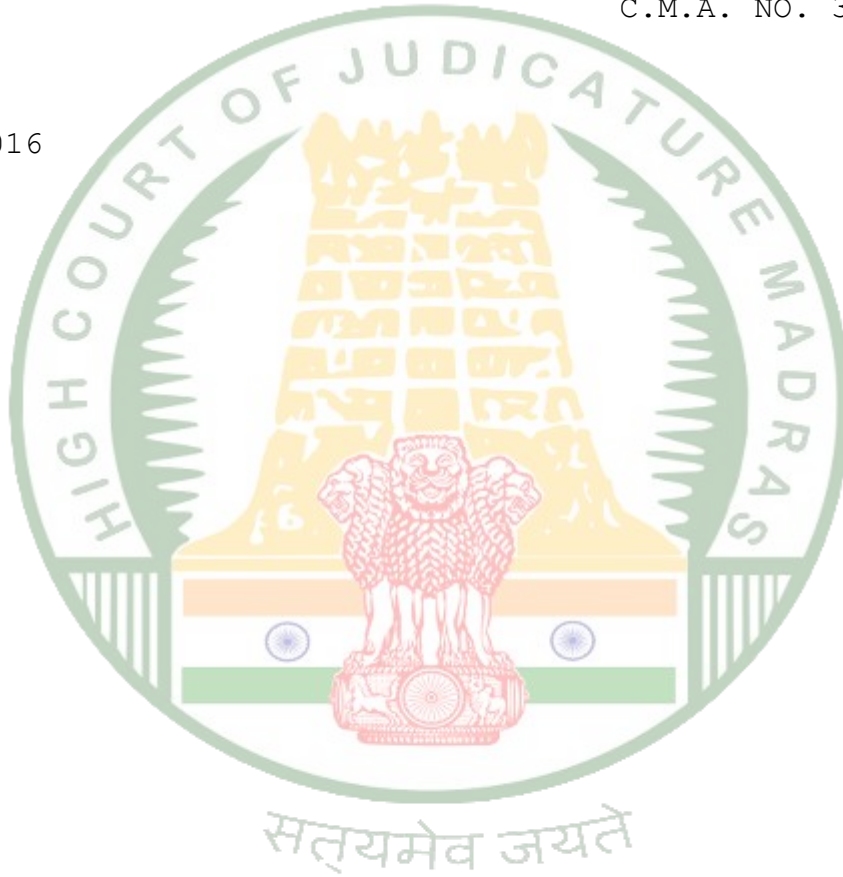
To

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

+1 cc to Ms.P.T.Salim Fathima Advocate sr.13883
+1 cc to Ms.R.Sree Vidhya Advocate sr.14117/16

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