

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.503 of 2014

J.Srinivasan

.. Appellant/Petitioner

-vs-

1. K.Kasturi

2. The Divisional Manager

United India Insurance Company Ltd.,

Divisional Office

13A, Nethaji Road

Cuddalore 607 001

(1st Respondent unnecessary party

Hence given up)

... Respondents/Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 06.08.2010 made in M.C.O.P.No.853 of 2008 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Cuddalore.

For Appellant :: Mr.R.Sreedhar

For Respondents :: Mr.J.Chandran for R2
R1-Given up

JUDGMENT

The injured claimant, having received the impugned award from the Motor Accident Claims Tribunal, Principal Subordinate Judge, Cuddalore in M.C.O.P.No.853 of 2008 dated 6.8.2010 for a sum of Rs.1,26,500/- together with interest at 7.5% per annum, has brought this appeal for enhancement.

2. Learned counsel for the appellant has submitted that on 12.2.2008 at about 7.30 hours when the appellant was riding his Hero Honda Splendor Motorcycle bearing Registration No.TN 31 H 5639 along with his wife Sundari as pillion-rider from west to east direction at a moderate speed on the left side of Panruti to Cuddalore main road, near Sri Thirumal Nagar, the offending vehicle, namely, Durga bus bearing Registration No.TN 31 H 7367

coming in the same direction hit behind the Hero Honda Splendor motorcycle rashly and negligently, resultantly both of them sustained multiple and grievous injuries and they were taken to the nearby hospital for treatment. Due to the fracture and other multiple injuries sustained by the injured claimant, he was not able to perform any work. Therefore the appellant filed a claim petition before the Tribunal seeking a compensation of Rs.10,00,000/- for the injuries sustained by him. But the Tribunal, considering the case of the injured claimant, has awarded only a sum of Rs.1,26,500/-. Further, although 45% disability has been assessed by the doctor-P.W.3, the Tribunal, instead of fixing Rs.3,000/- per percentage of disability, has wrongly fixed Rs.1,500/- per percentage of disability. Therefore, he pleaded that if Rs.3,000/- per percentage of disability as per the settled legal position and a reasonable amount is awarded under the heads 'pain and sufferings' and 'loss of amenities', that would be considered as just and reasonable compensation. Explaining further, the learned counsel has brought to the notice of this Court the multiple injuries sustained by the appellant. On this basis, he sought for enhancement of the compensation.

3. Heard the learned counsel for the second respondent Insurance company.

4. It is a case where the Tribunal has accepted the claimant's case that there was an accident on 12.2.2008 caused by the negligent driving of the driver of the Durga bus bearing Registration No.TN 31 H 7367 and finally saddled the liability on the insurance company, which has taken insurance coverage of the bus. Even before this Court, the insurance company has not questioned the quantum of compensation. It is not in dispute that the injured claimant has sustained the following injuries:-

"Abrasion over right leg, left hand, nose,
left knee
Contusion near right ankle in the leg
Lacerated wound right ankle 2 x 2 cm."

Although the Tribunal has accepted the evidence of the doctor, P.W.3, assessing the disability of the appellant at 45% based on the disability certificate, Ex.P13 and X-ray, Ex.P14, deposing that there is a fracture of the tibia, fibula bones in the right leg and a surgery was also performed for inserting the steel plates and thereafter the same were removed, the right leg has been shortened by 1.5 cms., and that the appellant was unable to sit cross legged and unable to perform his regular duties, it has wrongly awarded a sum of Rs.1,500/- only for each percentage of disability, instead of Rs.3,000/- per percentage of

disability as per the settled legal position. Therefore, this Court, considering the multiple injuries sustained by the injured, finding fault with the approach adopted by the Tribunal in fixing Rs.1,500/- per percentage of disability for 45% disability, is inclined to fix Rs.3,000/- per percentage of disability. Accordingly, a sum of Rs.1,35,000/- is awarded towards partial permanent disability at the rate of Rs.3,000/- per percentage of disability for 45% disability. It is also not disputed by the insurance company that after the accident on 12.2.2008, the injured was taking treatment as an in-patient at Government Hospital, Cuddalore and he was shifted to Abirami Hospital, Cuddalore for better treatment. Since he was taking treatment as an in-patient from 12.2.2008 to 15.2.2008 in the Government Hospital, Cuddalore and again for the fracture of the tibia, fibula bones in the right leg, he was again taking treatment as an in-patient on 25.2.2008 and 26.2.2008 and further taking treatment on 1.10.2008 and 2.10.2008 and surgeries were also performed for insertion and removal of the steel plates, it is a fit case where this Court has to award a reasonable amount towards the pain and sufferings. Hence, a sum of Rs.50,000/- is awarded towards pain and sufferings. Further, considering the age of the injured, a sum of Rs.20,000/- is awarded towards loss of amenities and a sum of Rs.2,000/- is awarded towards attender charges. However, the award of Rs.9,000/- towards loss of income, Rs.30,000/- towards medical, transportation and nutrition expenses as ordered by the Tribunal are sustained. Accordingly, the award of the Tribunal is modified and the appellant is entitled to a total compensation of Rs.2,46,000/- together with 7.5% interest per annum from the date of petition till realisation, as detailed below:-

45% partial permanent disability (Rs.3000/- per percentage of disability)-	Rs.1,35,000
Loss of income for 3 months -	Rs. 9,000
Medical, transportation & nutrition exp.-	Rs. 30,000
Pain and sufferings -	Rs. 50,000
Loss of amenities -	Rs. 20,000
Attender charges -	Rs. 2,000

Total	Rs.2,46,000
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The second respondent is directed to deposit the entire amount of compensation together with interest to the credit of the M.C.O.P.No.853 of 2008 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Cuddalore within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the injured claimant is entitled to withdraw the entire amount with accrued interest by moving appropriate application before the Tribunal, after complying

with the formalities. The civil miscellaneous appeal is allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

ss

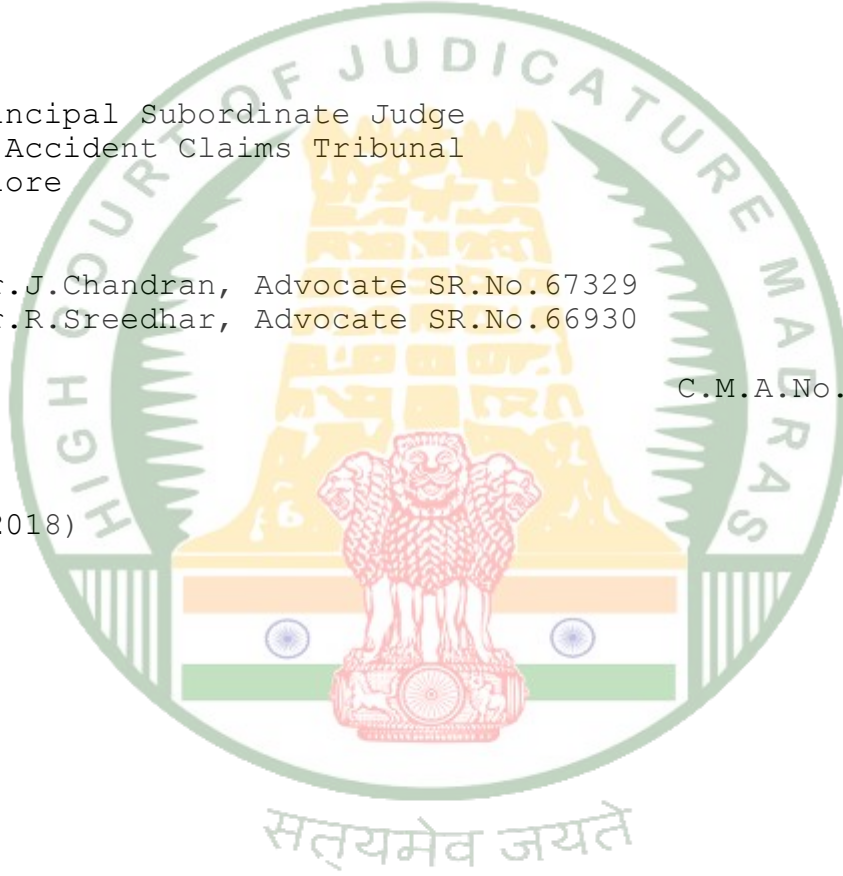
To

1. The Principal Subordinate Judge
Motor Accident Claims Tribunal
Cuddalore

+1cc to Mr.J.Chandran, Advocate SR.No.67329
+1cc to Mr.R.Sreedhar, Advocate SR.No.66930

C.M.A.No.503 of 2014

RJ(CO)
GN(15/03/2018)



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