

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2016

CORAM :

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

CMA.No.1758 of 2012

T.Arumugham

... Appellant/Claimant

Vs.

1.K.Navaskani

2.National Insurance Co. Ltd.,
No.66, Greaves Road,
Chennai-600 006.

... Respondents/Respondents

PRAYER : Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 29.11.2011 made in MACT.OP.No.1877 of 2008 on the file of the II Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For appellant : Mr.N.M.Muthurajan.

For respondents : Mr.J.Chandran for R2.
R1- Exparte.

JUDGMENT

The Civil Miscellaneous Appeal is filed against the order dated 29.11.2011 made in MACT.OP.No.1877 of 2008 on the file of the II Small Causes Court (Motor Accident Claims Tribunal), Chennai, for enhancing the compensation awarded to the appellant.

2.The learned counsel for the appellant would mainly contend that the trial Court ought to have fixed the disability as 45%, as per Ex.P6 issued by the Doctor and the trial Court erroneously fixed the disability as 15%. The injured/appellant is an auto driver earning Rs.350/- per day at the time of accident and taking treatment for more than six months, the trial Court fixed the monthly income of the injured as Rs.4,500/-p.m. and awarded Rs.13,500/- (Rs.4,500/- x 3) for loss of earning capacity for three months is not correct, the trial Court ought to have awarded compensation for loss of maintenance for life and to enhance the compensation under the head of extra nourishment and to award compensation under the head for attendant benefits. The trial Court ought to have allowed the

compensation including the earning power/capacity and by calculating the multiplier method. Hence, the learned counsel prays to set aside the order of the trial Court and to allow the appeal.

3.The learned counsel for the second respondent/insurance company would contend that the trial Court after considering the entire facts and circumstances of the case and after analysing the evidence awarded just and compensation. The trial Court after perusing the entire facts and circumstances and also the records made available correctly passed the order. Hence, the learned counsel prays for dismissal of the appeal.

4.Heard the rival submissions made on both sides and perused the records.

5.On perusal of the records, the claimant in his claim petition claimed compensation under the following heads : -

HEADS	Rs.
Partial Loss of earning	40,000
Transport to hospital	10,000
Extra nourishment	15,000
Damage to clothing and articles Dress materials damaged	1,000
private medical expenses	5,000
future medical expenses	10,000
Compensation for attendance	10,000
Loss of amenities of life	50,000
Compensation for pain and suffering	1,00,000
Compensation for continuing or permanent disability	1,50,000
Compensation for the loss of earning power	2,09,000
Total	6,00,000

But the trial Court awarded compensation under the heads as follows :

HEADS	Rs.
Loss of earning power/capacity	1,29,600
Permanent disability	30,000
Loss of income during treatment	13,500

HEADS	Rs .
Transport charges	5,000
Extra nourishment	2,000
Damage to Clothes and articles	1,000
Medical Expenses	5,000
Pain and sufferings	25,000
Total	2,11,100

6. It is seen that the trial Court fixed the income of the injured as Rs.4,500/-p.m. and awarded only Rs.13,500/- (Rs.4,500 x 3) for loss of earning capacity for three months, since the claimant is not able to work for more than six months, this Court is inclined to accept the arguments of learned counsel for the appellant, which is very much reasonable, there is no documents adduced on the side of the claimant to prove the income of the claimant as Rs.9,000/-p.m. Further the claimant in the present petition claimed Rs.6,000/-p.m. from 01.04.2008 to 30.09.2008, even though the claimant filed claim petition on 04.04.2008, the claimant himself stated that he is not able to work for six months. A sum of Rs.13,500/- was awarded for loss of income during treatment has to be calculated for six months i.e, (Rs.4,500 x 6 = 27,000/-) was allowed to be enhanced for another sum of Rs.13,500/-.

7.The learned counsel for the petitioner has also produced the judgment of the Hon'ble Supreme Court reported in 2013 (2) TNMAC 88(SC) - S.Manickam V. Metropolitan Transport Corp. Ltd., wherein it is held that :-

Permanent disability - loss of earning capacity - compensation under - award of, under both heads - Permissibility - High Court placing reliance on Full bench decision in Cholan Roadways, holding that award under both heads separately not maintainable and disallowed award under "Permanent Disability" - Not proper - Apex Court in B.Kothandapani disagreed with view taken by Full Bench - Apex Court in Subsequent decision in K.Suresh, following ratio in B.Kothandapani, awarded compensation under both heads - Award under "Permanent Disability", in instant case, therefore, restored.

8.In the aforesaid judgment, in paragraphs 8 and 11 it is held as follows :-

8. It is also not in dispute that based on the

evidence of the Claimant (PW1), the evidence with regard to permanent disability of 85% amputation of the right leg below the knee, his age and avocation, the Tribunal has awarded a sum of Rs.9,42,822/- as compensation with interest at 12%p.a. on the said amount. The High Court, while considering the Appeals of the Transport Corporation as well as the Claimant, placed reliance on a Full Bench decision of the same Court in Cholan Roadways Corporation Limited, Kumbakonam V. Ahmed Thambi and others 2006 (2) TNMAC 342 (FB) : 2006 (4) CTC 433, wherein it was held that if the injured is compensated for Loss of Earning and Loss of Earning Capacity, compensation need not be awarded separately for permanent disability. Based on the said principle laid down in the Full Bench decision, learned Single Judge directed a reduction of Rs.1,00,000/- fixed under the head 'permanent disability', from the total award.

11. Following the ratio in B.Kothandapani v. Tamil Nadu State Transport Corporation Limited, 2011 (2) TNMAC 62 (SC) in the subsequent decision viz., K.Suresh v. New India assurance Co. Ltd, and another 2012 (10) JT 484 another Bench of this Court, awarded separate amount for permanent disability apart from fixing compensation under the head "Loss of Earning" or "Earning capacity".

9. The compensation has to be awarded for loss of permanent disability and earning capacity, the trial Court has not awarded the compensation for the above two heads. This Court is of the considered view to enhance the compensation on the heads of loss of earning capacity and for Permanent disability has to be fixed.

10. In the result, the appeal is partly allowed by enhancing the compensation under the heads of loss of earning capacity from Rs.1,29,600/- to Rs.1,50,000/- for permanent disability from Rs.30,000/- to Rs.50,000/- and loss of income during treatment is enhanced from Rs.13,500/- to Rs.27,000/-. Hence, the compensation awarded by the trial Court is enhanced from Rs.2,11,100/- to Rs.2,65,000/- (2,11,100 + 20,400 + 20,000 + 13,500 = 2,65,000) The award passed by the Tribunal remains unaltered in other respects. The second respondent/insurance

company is directed to pay the enhanced amount of compensation along with interest within thirty days from the date of receipt of a copy of this judgment. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

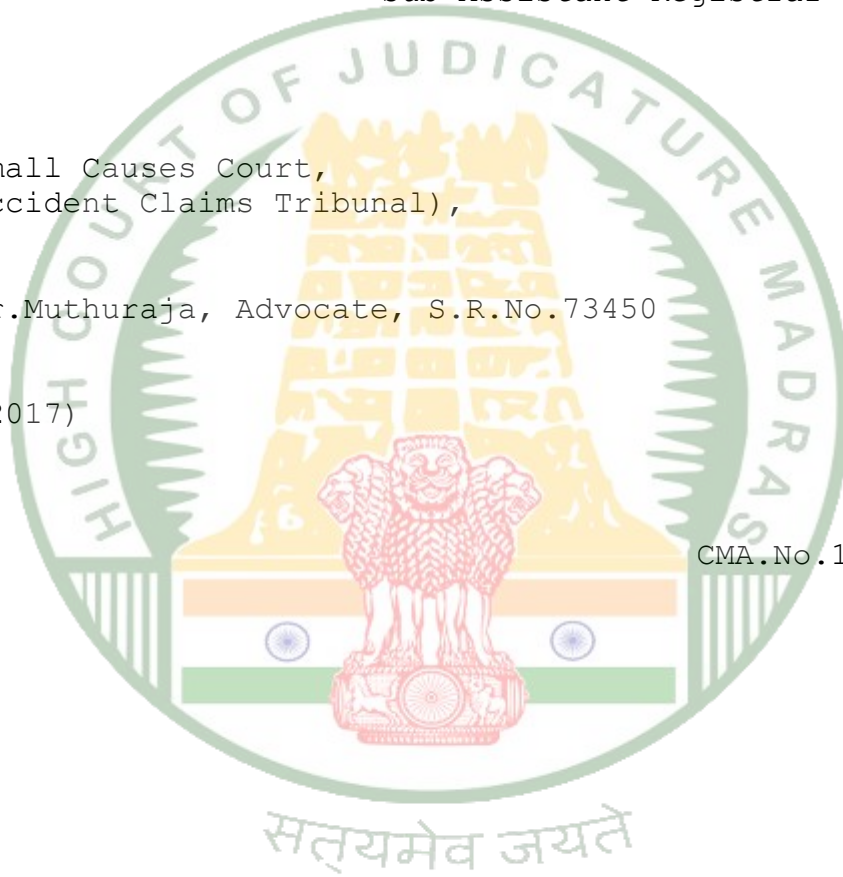
The II Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

+2cc to Mr.Muthuraja, Advocate, S.R.No.73450

VD(CO)

RS(23/03/2017)

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