

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10.01.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.1264 of 2011

P.Rajesh Khanna

... Appellant/Petitioner

-Vs-

1. B.Gnanasekaran,

2. Oriental Insurance Co., Limited,
No.377, Anna Salai, 3rd Floor,
Teynampet, Chennai-600 018. ...Respondents/Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against order and decretal order dated 01.02.2011 made in M.A.C.T.O.P.No.2908 of 2006 on the file of the VI Judge, Motor Accident Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Ms.T.Salim Fathima

R1 : Ex-parte before the trial Court

For R2 : Notice served. No Appearance

JUDGMENT

The claimant before the Tribunal approached this Court with the present appeal seeking enhancement of compensation awarded by the Tribunal for the injuries he had sustained in a road accident that took place on 05.04.2006. In the said accident, two motorcycles were involved and the claimant was riding one of them at the relevant time. The claimant sought a compensation of Rs.9,00,000/- whereas the Tribunal has passed an award for Rs.1,07,000/- payable with interest at 7.5% per annum.

2. Before the Tribunal, the second respondent/Insurance Company took a plea that the rider of the alleged offending motorcycle had no valid license, which is a violation of the policy condition and consequently, the Insurance Company should not be fastened any liability. It also took up a contention that the claimant/appellant also contributed in equal terms for the occurrence of the accident and hence the liability arising out of the alleged negligence should be apportioned between both the riders of the motorcycle. Appreciating the evidence before it,

the Tribunal had fixed negligence component fundamental to fixing liability to pay compensation on the rider of the first respondent alone and directed the second respondent/Insurance Company to pay and recover the compensation amount from the owner of the motorcycle.

4. Ms.T.Salim Fathima, learned counsel for the appellant's essential grievance is that the appellant had suffered fracture to his right tibia and fibula and also to his 4th and 5th metatarsal of his right foot. She took me through the evidence of PW-2 wherein the doctor has stated that the claimant's movement of his right knee is restricted to 120° and that of right hand to 25°. They have seriously impaired his movements, and has affected his efficacy to work in a competitive job market. It has also reasonably affected his marital prospectus since the appellant has to limp and could not walk as well as a normal person. On the point of disability, while PW-2, the doctor has determined the disability of the claimant/appellant at 30%, the Tribunal has reduced it to 25% and has awarded a sum of Rs.2000/- for every percentage of disability. So far as the other heads are concerned, learned counsel conceded that while compensation for every heads of other pecuniary heads and non-pecuniary heads have been awarded, so far as loss of income was concerned, the Tribunal has only granted three months loss of income by fixing notionally the monthly income of the claimant at Rs.6,000/-. The appellant was working as a Team Leader in M/s.HCL Commet Limited and fixation of his monthly income notionally at Rs.6000/- is low. The learned counsel, however conceded that no proof of his monthly salary has been produced before the Tribunal.

5. After going through the entire award and the evidence available on record, I am inclined to interfere only with compensation granted on the head of permanent disability. Given the nature of injury and extent of impairment to the right knee as well as the right ankle of the claimant, I consider that it would be appropriate and advisable to follow percentage of disability that the doctor has determined. Even though, the accident has taken place in the year 2006, taking into consideration that the victim was a young man and was yet to be married at the relevant time, and possibility of his injury affecting future career prospects, the permanent disability need to be reworked at Rs.3,000/- for every percentage of disability. Accordingly, I determine the compensation payable on the head of permanent disability at Rs.90,000/- instead of Rs.50,000/- awarded by the Tribunal. For loss of marital prospects, I award Rs.25,000/- since the nature of the injury is not likely to affect his entire marital prospects. In all, I enhance a compensation from Rs.1,07,000/- to Rs.1,72,000/- [Rupees one lakh and seventy two thousand only].

6. In the result, the Civil Miscellaneous Appeal is partly

allowed. The second respondent is directed to pay a sum of Rs.1,72,000/-, less if any amount already deposited with interest at 7.5% per annum within four weeks from the date of receipt of a copy of this order, whereupon the claimant would be entitled to withdraw the amount so deposited forthwith. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmi

To

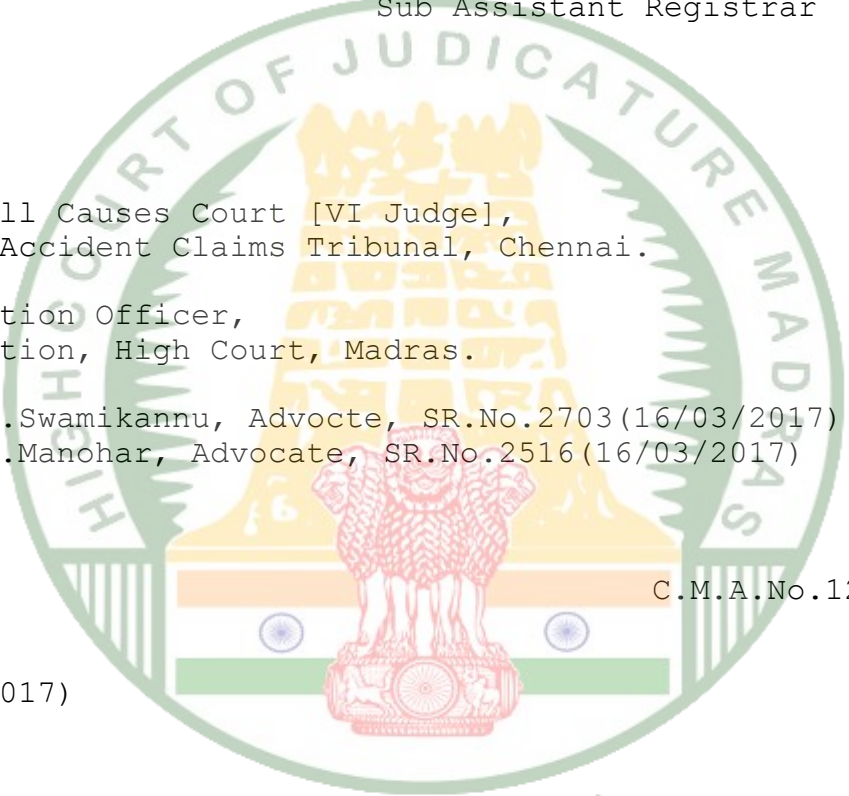
1. The Small Causes Court [VI Judge],
Motor Accident Claims Tribunal, Chennai.
2. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.Swamikannu, Advocate, SR.No.2703(16/03/2017)

+1cc to Mr.Manohar, Advocate, SR.No.2516(16/03/2017)

C.M.A.No.1264 of 2011

GJ(CO)
RS(13/02/2017)



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