

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2017

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.1525 of 2017

S.Panneerselvam

... Appellant/Petitioner

..Vs..

1. L.Selvaraj

2. New India Assurance Company Ltd.,
No.45 Moore Street,
Chennai 600 001

... Respondents/Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set-aside the judgment and decree dated 12.06.2009, made in MACTOP No.4028 of 2006 on the file of the Motor Accident Claims Tribunal (III Small Causes Court), Chennai.

For Appellant : Mr. Terry Chellaraja

For Respondents: Mr. M.Krishnamurthy, for R-2,

R-1 Exparte before the Tribunal below.

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant / claimant, challenging the quantum of compensation awarded. The claimant, S.Panneerselvam, aged 28 years, Mason and self-employed, earning a sum of Rs.250/- per day, met with an accident on 06.09.2006.

2. The Tribunal quantified the compensation at Rs.1,71,000/-, after considering the evidence of the claimant as well as the Doctor. A perusal of the evidence of the Doctor would go to show that the claimant has sustained fracture on left leg knee, fracture of proximal phalany right toe, fracture of 4th and 5th right metatarsal bone, fracture of proximal phalany 4th toe in the accident. The Tribunal, while quantifying the compensation, has considered the evidence of P.W.3, Doctor, who certified the disability at 55%.

3. The learned counsel for the second respondent / Insurance Company would submit that, when the fracture is at the age of '28', it would not lead to 55% of disability and therefore, the percentage of disability, as assessed by the Doctor, cannot be accepted.

3.1. This contention has no scientific basis and unless it is established factually that the fracture did not lead to 55% disability, the contention of the learned counsel appearing for the Insurance Company / R-2 cannot be accepted.

3.2. However, when the claimant / appellant demanded payment of disablement compensation at the rate of Rs.3,000/- per percentage (in respect of 55% disablement), it was pointed out that during the relevant point of time, i.e., during the year 2006, the amount awarded per percentage of disability was only Rs.2,000/- and not Rs.3,000/-.

3.4. This contention is well founded and the compensation should have been awarded only at Rs.2,000/- per percentage, but it had been awarded only at the rate of Rs.1,000/- per percentage. Therefore, the compensation on account of permanent disablement is awarded at the rate of Rs.2,000/- per percentage, which comes to Rs.1,10,000/-.

3.5. But the Tribunal has awarded compensation on the head of 'mental agony to the family members' at Rs.20,000/- and this award is unwarranted and it cannot be permitted under law. Therefore, this amount of Rs.20,000/- needs reduction from the overall compensation awarded by the Tribunal.

4. So far as the claim under the head of loss of enjoyment of amenities of life at Rs.10,000/- is concerned, the learned counsel for the appellant / claimant would point out that, when the injured is aged 28 years and there is a fracture in the knee, having regard to the profession he was doing, it would result in loss of enjoyment of amenities, which should have been compensated at least by awarding compensation at Rs.25,000/-. Therefore, there shall be an increase of Rs.15,000/- on that ground.

5. Therefore, there shall be an over-all increase of Rs.50,000/- over and above the compensation awarded by the Claims Tribunal, which is payable with interest at 7.5% per annum, from the date of petition till the date of deposit. The entire compensation amount shall be deposited by the Insurance Company, less the interest for the period of delay (1406 days) and less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant / claimant

is permitted to withdraw the entire amount of compensation. The claimant shall pay the necessary court fee before receiving the copy of this judgment. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

srk

To

1. Motor Accident Claims Tribunal (III Small Causes Court),
Chennai.

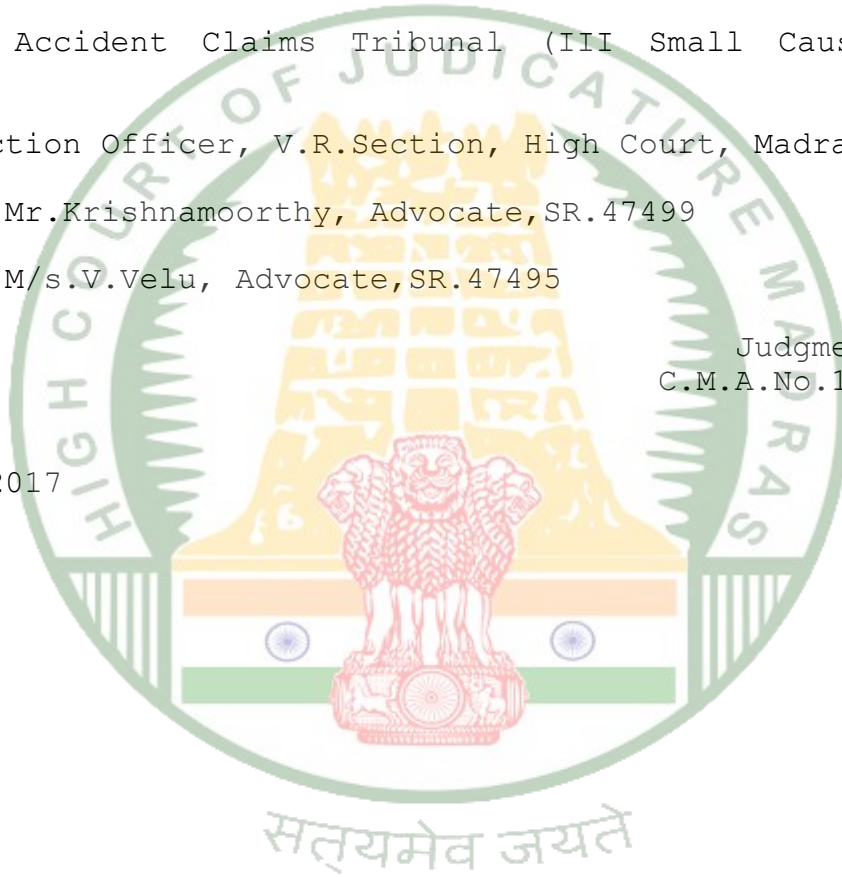
2. The Section Officer, V.R.Section, High Court, Madras

+ 1 cc to Mr.Krishnamoorthy, Advocate,SR.47499

+ 1 cc to M/s.V.Velu, Advocate,SR.47495

Judgment in
C.M.A.No.1525 of 2017

RK(CO)
NR 21/09/2017



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