

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.1576 of 2014

Manikandan ... Appellant/claimant
versus

1. N.Karuppa Chetty

2. M/s.The United India Insurance
Co. Ltd.

Salem - 636 007. ... Respondents/Respondents
(R1 remained ex parte before the
Tribunal)

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.03.2003 made in M.C.O.P.No.352 of 2000 on the file of Motor Accident Claims Tribunal (I Additional District Judge-cum-Chief Judicial Magistrate) Salem.

For Appellant : Mr.J.Ramakrishnan
For R-2 : Mr.T.Ravichandran

JUDGMENT

The claimant, Manikandan, filed a claim petition before the Motor Accident Claims Tribunal, (First Additional District Judge-cum-Chief Judicial Magistrate), Salem, claiming compensation of Rs.5,00,000/- for the injuries sustained by him in the accident that took place on 18.11.1999.

2. The Tribunal, after considering the oral and documentary evidence, awarded a sum of Rs.90,000/- as compensation along with interest at the rate of 9% p.a. from the date of petition till the date of deposit. The break-up details of the compensation reads as under:

Medical expenses	-	Rs.42,000/-
Pain and suffering	-	Rs. 5,000/-
Transport charges	-	Rs. 1,000/-
Extra nourishment	-	Rs. 1,500/-
Damage to clothes	-	Rs. 500/-
Disability at 40%	-	Rs.40,000/-
Total	-	Rs.90,000/-

Challenging the quantum of compensation as inadequate, the claimant has filed this Civil Miscellaneous Appeal.

2. The learned counsel appearing for the appellant submits that due to the accident, the appellant/claimant has suffered fracture on his right hand and though surgery was performed, however, even after the said surgery, he cannot fold his right hand freely and lift weight in his right hand, which disables him from carrying out his avocation in an efficient manner, thereby affecting his earning capacity. Further, the appellant/claimant had taken treatment in the hospital as inpatient for more than three months, hence, the loss of earning during the treatment period ought to have been awarded by the Tribunal. Hence, the compensation awarded by the Tribunal requires interference.

3. The above contention of the appellant is countered by the learned counsel for the second respondent/Insurance Company contending that the compensation awarded by the Tribunal is just and reasonable and does not require any interference.

4. The appellant/claimant, at the time of accident, was aged about 18 years and he was working in a Spinning Company at Pallipalayam and earning a sum of Rs.3,000/- p.m. Due to the accident, he suffered fracture on his right hand and took treatment as inpatient for more than three months. It is the case of the claimant that due to the fracture he is unable to fold his right hand and cannot do the work, as before. Therefore, his loss of earning is affected due to the disability suffered by him. Disability has been assessed at 40% by the doctor, P.W.2.

5. Ex.P11-Salary Certificate, produced before the Tribunal, reveals that the claimant was earning a sum of Rs.2,250/- p.m. Due to the disability suffered, the appellant/claimant and the consequent hospitalisation thereon, the claimant would not have been able to attend the job at least for a period of six months. Therefore, the compensation towards loss of earning during the treatment period should have been considered. Accordingly, this Court awards a compensation towards loss of earning for six months at Rs.13,500/- (Rs.2,250/- x 6).

6. Considering the disability suffered by the claimant and also considering the age of the claimant at the time of accident, the compensation towards loss of earning capacity has to be worked out. Considering a) monthly income at Rs.2250/-, b) future prospective increase in income at 50%, i.e. Rs.2250/- x 50/100; c) even though physical disability has been assessed at 40%, however, considering the functional disability at 20%

and d) adopting multiplier of 18, the claimant would be entitled to a compensation in a sum of Rs.1,45,800/- (Rs.2250/- + 50% x 12 x 20% x 18). Accordingly, this Court awards a sum of Rs.1,45,800/- under the head disability.

7. Even under the other heads, the compensation awarded by the Tribunal is very meagre and, therefore, the amount awarded by the Tribunal is restructured with required enhancement as under :-

Loss of earning	
during six months (Rs.2250 x 6)	- Rs. 13,500/-
Transport expenses	- Rs. 9,320/-
Extra nourishment	- Rs. 5,000/-
Attendant charges	- Rs. 10,000/-
Pain and sufferings	- Rs. 15,000/-
Loss of enjoyment of amenities	- Rs. 30,000/-
Medical expenses	- Rs. 42,000/-
Disability	- Rs.1,45,800/-
Total	- Rs.2,70,620/-

8. In the result, the Civil Miscellaneous Appeal is allowed, enhancing the compensation from Rs.90,000/- to Rs.2,70,620/-, which is payable along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. However, there shall be no order as to costs.

9. It is represented that the Insurance Company has already deposited the amount of compensation as awarded by the Tribunal. The Insurance Company is directed to deposit the balance portion of the compensation as enhanced by this Court above along with interest at 7.5% p.a., from the date of claim petition till date of deposit to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter. The claimant shall pay the necessary court fee towards the enhanced compensation.

Sd/-

Assistant Registrar (CS-VII)

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Sub Assistant Registrar

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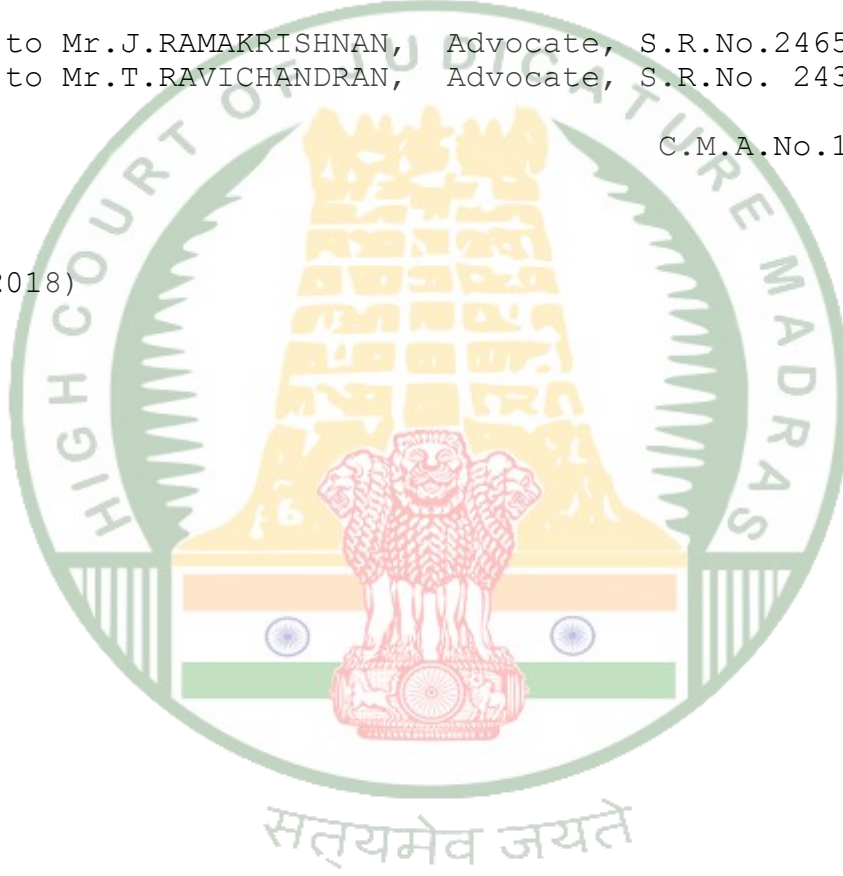
To

1. The I Additional District Judge-cum
-Chief Judicial Magistrate
The Motor Accident Claims Tribunal
Salem.
2. The Section Officer,
VR Section,
Madras High Court, Chennai.

+1cc to Mr.J.RAMAKRISHNAN, Advocate, S.R.No.2465
+1cc to Mr.T.RAVICHANDRAN, Advocate, S.R.No. 2437

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SV(CO)
TR(19/03/2018)



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