

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2017

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THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.1913 of 2017

V.Vignesh @ Shanmugam .. Appellant
(Cause title accepted vide
order of Court dated 11.02.2014
made in M.P.No.1 of 2014 in
CMA.Sr.No.10684 of 2010)

/Vs/

- 1.V.Ganesh Kumar
(First respondent was set Ex-parte
in the trial Court).
2. National Insurance Co., Ltd.,
DAB -1, Murugesha Naciker Office Complex,
66, Greams Road, Chennai - 600 006. ... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.01.2012 made in M.A.C.T.O.P.No.520 of 2009 on the file of II Judge before the Motor Accident Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mr.K.V.Muthuvisakan

JUDGMENT

Challenging the quantum of compensation awarded by the Tribunal to the minor claimant, aged 15 years, who suffered a fracture of both bones in the right leg, has filed the appeal seeking enhancement of compensation.

2. Vignesh @ Shanmugam, a student of 9th standard,

aged 15 years met with an accident 05.01.2009. The doctor, who issued the disability certificate, has described the problem of disablement in the following language; "the petitioner has sustained fracture of both bones below knee in the right leg. He has been treated conservatively by application of slab. The fracture is malunited with expansion. Right knee muscles are hardened. The movements of the right ankle are reduced by 30 degrees. The petitioner is having pain and swelling. The right foot is also having permanent bend. The petitioner is having difficulty in walking and standing for a long time."

3. The tribunal has quantified the compensation with the following break up details:

Permanent Disability	-	Rs. 70,000/-
Transport charges	-	Rs. 2,000/-
Extra Nourishment	-	Rs. 2,000/-
Damage to Clothes and articles-		Rs. 1,000/-
Medical Expenses	-	Rs. 5,000/-
Pain and Sufferings	-	Rs. 20,000/-

Total Compensation	-	Rs.1,00,000/-

4. The learned counsel for the appellant would point out that when the claimant is a minor at the time of accident, aged

about 15 years, who has suffered fracture of both bones, would suffer loss of enjoyment of amenities and that has not been considered by the Claims Tribunal. Considering the nature of disability, a sum of Rs.15,000/- is awarded towards loss of enjoyment of amenities.

4.1. It is also pointed out that when the Tribunal has not chosen to quantify the loss of earning capacity by adopting multiplier method of quantification. It is claimed that disablement compensation, at least, should have been awarded at the rate of Rs.3000/- per percentage and the award at the rate of Rs.2,000/- per percentage is a meager amount. Admittedly, the occurrence had taken place in the year 2009, during the relevant point of time, the disablement compensation had been awarded at Rs.3000/- per percentage. Therefore, the disablement compensation has to be enhanced by 35,000/- (35% X 3,000/-). Thus, the award of permanent disablement enhanced from Rs.70,000/- to Rs.1,05,000/-. Thus, there is an overall enhancement of Rs.50,000/- towards award of compensation which shall be payable by the insurance company along with interest at the rate 7.5% per annum from the date of petition till the date of deposit.

5. It is represented that the entire award amount as determined by the Claims Tribunal has been already deposited by the insurance company. Therefore, the enhanced amount of Rs.50,000/- shall be deposited by the insurance company along with

interest at 7.5% per annum from the date of petition till the date of deposit within a period of four weeks from the date of the receipt of a copy of this judgment. Additional Court fee shall be paid by the claimant for the enhanced amount before obtaining the copy of the judgment. On such deposit being made, the Tribunal is directed to transfer the compensation amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter. It is also made clear that the claimant shall not be entitled to interest for the delay period.

6. In the result, the Civil Miscellaneous Appeal stands allowed to the extent indicated. No costs.

06.07.2017

Index : Yes/No

Internet : Yes/No

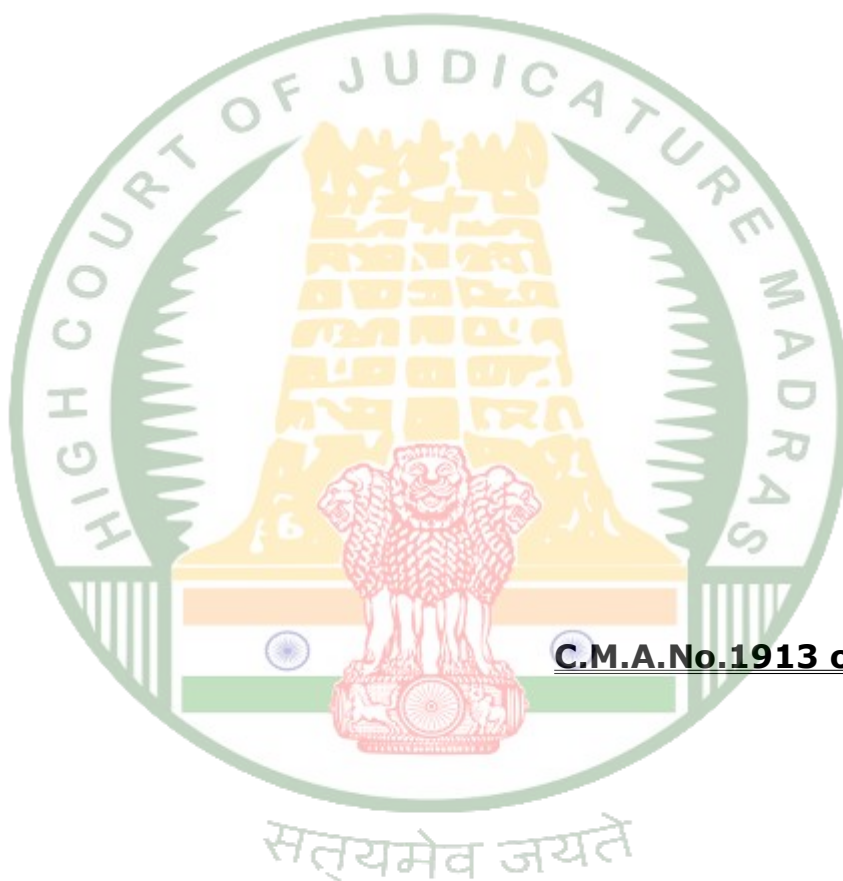
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To

1. National Insurance Co., Ltd.,
DAB -1, Murugesha Naciker Office Complex,
66, Greams Road, Chennai - 600 006.
2. The Motor Accidents Claims Tribunal,
(Court of Small Causes), Chennai.
3. The Section Officer, VR Section,
High Court, Madras.

Dr.S.VIMALA,J.

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