

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal Nos.3505 and 3513 of 2014

CMA.No.3505 of 2014

B.Baskaran

.. Appellant/Petitioner

-Vs-

1. K.Magesan

2. M/s.Oriental Insurance Company Ltd.,
S.V.Complex, No.179, Easwaran Koil Street,
Puducherry-1.

.. Respondents/Respondents

CMA.No.3513 of 2014

The Oriental Insurance Co.Ltd.,
S.V.Complex,
No.179, Easwaran Koil Street,
Puducherry-1.

.. Appellant/2nd respondent

-Vs-

1. Baskaran

2. K.Magesan

.. Respondents/Petitioner /1st Respondent

Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 03.02.2014 made in MCOP No.456 of 2007 on the file of learned II Additional District Judge, Pondicherry.

For Appellant in

CMA.3505/2014

1st Respondent

in CMA.3513/2014

: Mr.Harshad Goklaney,
Senior Counsel
for Mr.Murguan

For 1st Respondent

in CMA.3505/2014

2nd Respondent

in CMA.3513/2014

: Ex-parte before Court below

For 2nd Respondent

in CMA.3505/2014

For Appellant

in CMA.3513/2014

: Mr.N.Vijayaraghavan

J U D G M E N T

[Judgement of the Court was delivered by C.T.SELVAM, J.]

The Civil Miscellaneous Appeal No.3505 of 2014 is filed by the appellant/claimant against the judgement and decree dated 03.02.2014 made in MCOP No.456 of 2007 on the file of learned II Additional District Judge, Pondicherry for enhancement of compensation. Civil Miscellaneous Appeal No.3513 of 2014 is preferred by the Insurance Company against such judgement and decree.

2. Claimant/appellant in CMA.No.3505 of 2014 was riding a motor cycle bearing Registration No.PY-01-X-7309, his brother riding pillion on 19.10.2004 at about 23.50 hours. Owing to an accident involving his vehicle and a Hero Honda Splendor Motor cycle bearing Registration No.TN-25-B-9501, driven in a rash and negligent manner from the opposite direction, he suffered grievous injuries. First respondent in CMA.No.3505 of 2014/second respondent in CMA.No.3513 of 2014 is the owner of the vehicle.

3. Before the Tribunal, on the side of claimant/appellant in CMA.No.3505 of 2014, 3 witnesses were examined and 112 exhibits were marked. None were examined on behalf of insurance company/appellant in CMA.No.3513 of 2014, nor any exhibits were marked.

4. On appreciation of materials before it, Tribunal awarded a total sum of Rs.27,84,000/- as compensation under various heads.

5. Heard learned Senior Counsel for appellant/claimant in CMA.No.3505 of 2014/first respondent in CMA No.3513 of 2014 and learned counsel for second respondent/Insurance Company in CMA.No.3505 of 2014/ Appellant in CMA No.3513 of 2014.

6. Learned Senior Counsel submitted that the Tribunal had erred in arriving at the income of the claimant as Rs.10,000/- per month as also applying multiplier 16. As an advocate of more than five years standing at the Bar, it would be reasonable to find that he would have earned Rs.12,000/- per month. The claimant had suffered hospitalisation for a period of 203 days at MIOT Hospital and estimate provided by MIOT Hospital on 06.10.2012 informs the further expenses to be incurred by him, i.e., surgical and other expenses at Rs.6,60,000/-. Learned Senior Counsel submits that the estimate is of the year 2012 and a sum of atleast Rs.8,00,000/- [Rupees Eight Lakhs only] is to be provided on such ground. Learned Senior Counsel further submitted that compensation under the

head of loss of future prospects has not awarded by the Tribunal.

7. Learned counsel for Insurance Company submitted that Tribunal ought not to have awarded at Rs.84,000/- towards loss of income, when it has already made provision for loss of earning capacity. She would submit that the grant of compensation on several heads is excessive.

8. This Court considers it appropriate to hold that the claimant, as on the date of accident would have earned Rs.12,000/- p.m. The proper multiplier to be adopted would be 17, as the Bar Council Registration Certificate of the claimant informs the date of birth to be 01.05.1974. It would be appropriate to include 50% towards future prospects. When the hospital estimate, with regard to the future medical expenses in the year 2012 has been placed at Rs.6,00,000/-, it is reasonable to accept that a sum of Rs.8,00,000/- would now have to be expanded.

9. This Court holds as follows:-

Head	Awarded by Tribunal (Rs.)	Awarded by this Court (Rs.)
Partial Permanent Disability	1,50,000 (75%X2000)	2,25,000 (75%X3000)
Loss of earning capacity	19,44,000 (12000 X 12 X 18 = 25,92,000) (75%)	27,54,000 (12000 X 12 X 17 + 50% = 36,72,000) (75%)
Pain and sufferings	25,000	25,000
Medical Expenses	6,30,000	6,30,000
Extra Nourishment	10,000	10,000
Travelling Expenses	25,000	25,000
Future Medical Expenses	-	8,00,000
Total	27,84,000	44,69,000

10. The Civil Miscellaneous Appeal No.3505 of 2014 is allowed. The second respondent/Insurance Company is directed to deposit the enhanced compensation amount with proportionate interest, less the amount already deposited, within a period of six weeks from the date of receipt of this judgment. Appellant/claimant is at liberty to withdraw the amount on due application as apportioned by Tribunal. Deficit Court fee, if payable, by appellant/claimant in keeping with the quantum

awarded by this Court shall be paid within two months of the receipt of this judgment. CMA.No.3513 of 2014 is dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

kmi

To

1. The II Additional District Judge,
Puducherry.

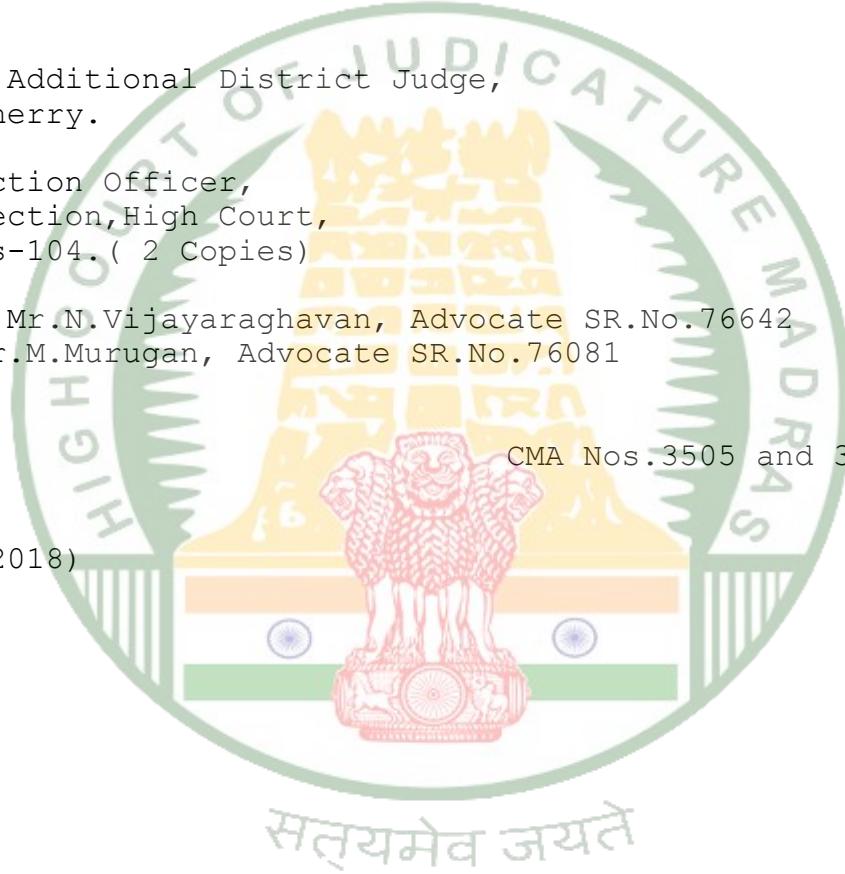
2. The Section Officer,
V.R.Section,High Court,
Madras-104.(2 Copies)

+2cc's to Mr.N.Vijayaraghavan, Advocate SR.No.76642

+2cc to Mr.M.Murugan, Advocate SR.No.76081

CMA Nos.3505 and 3513 of 2014

KK(CO)
GN(02/02/2018)



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