

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.02.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.638 of 2017

P. Shivaji

.. Appellant

Versus

1. J. Mohanakumar

2. National Insurance Company Limited,
No.29, Pulla Avenue, Shenoy Nagar,
Chennai - 30

.. Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 04.01.2012 made in M.C.O.P.No.4026/2007 on the file of Motor Accident Claims Tribunal, (VI Small Causes Court).

For appellant : Mr. K. Varadha Kamaraj

For Respondent : Mr. Sankara Narayanan for R2

J U D G M E N T

Challenging the quantum of compensation awarded by the Claims Tribunal in M.C.O.P.No.4026 of 2007, dated 04.01.2012, as inadequate, the claimant has filed this Appeal.

2. The claimant one Shivaji aged 40 years, working as Security, earning a sum of Rs. 5,000/- per month, met with an accident on 28.03.2007, due to which,

he suffered fracture of both bones in the right leg and also sustained grievous injuries. Hence, the claimant filed a claim petition, in M.C.O.P.No.4026 of 2007, seeking compensation for a sum of Rs.2,50,000/-.

3. The Claims Tribunal, on consideration of oral and documentary evidence, awarded a sum of Rs. 2,00,146/- (Rupees Two Lakh One Hundred and Forty Six Only) as compensation, the break up details of the same are as follows:

Pecuniary Loss:

1. Loss of income for 3 months
at the rate of Rs.4500/-p.m: Rs. 13,500/-

2. Transportation : Rs. 7,000/-

3. Extranourishment : Rs. 5,000/-

4. Damage to clothes : Rs. 1,000/-

5. Medical Expenses : Rs. 68,646.37

Non pecuniary Loss

6. Pain and suffering : Rs. 25,000/-

7. Disability of 40% at Rs.2000/-
per percentage : Rs. 80,000/-

Rs.2,00,146.37/-

4. The learned counsel for the appellant submits that the compensation awarded by the Tribunal is very low and the same needs to be enhanced.

Learned counsel further submitted that even though the claimant sustained fracture of both the bones in the right leg and also sustained grievous injuries, the Claims Tribunal has not adopted multiplier method of quantification. He further submitted that no compensation has been awarded towards loss of enjoyment of amenities and no attender charges has also been awarded.

5. A perusal of the records reveal that the claimant had suffered many grievous injuries and has also suffered fracture of both the bones in the right leg for which surgery was performed on the claimant. The claimant was admitted as in-patient in the hospital, which is borne out by record. Further, the nature of injury suffered by the claimant, as spoken to by the doctor reveals that the disability suffered by the claimant would have a impact on the enjoyment of amenities by the claimant in his future life. Therefore, compensation should have been awarded under the said head. Therefore, this Courts deems it fit to award a sum of Rs.40,000/- as compensation under the head loss of amenities.

6. As rightly pointed out, no compensation has been awarded towards attender charges. As pointed out above, surgery was performed on the claimant and that the claimant was admitted as in-patient in the hospital and, therefore, necessarily, the claimant would have been dependent on an attendant. Definitely, in such a scenario, compensation towards attender charges is a necessary compensation, which has not been awarded by the Tribunal. Moreover, loss of income should have been awarded at least for 6 months. Therefore, this Court awards a compensation of Rs.50,000/- under the head attender charges and loss of income for remaining 3 months.

7. Under the other heads the compensation awarded by the Tribunal seems to be just and reasonable. Though it was contended by the learned counsel for the claimant that multiplier method should have been adopted for

working out compensation towards disability, however taking into consideration the entire factual matrix, this Court is of the consideration that the per percentage method adopted is fair and justified in the facts and circumstances of the case.

8. In the result, this Civil Miscellaneous Appeal is allowed, enhancing the award amount from Rs.2,00,146/- to 2,90,146/-, which shall carry interest @ 7.5% p.a. from the date of petition till the deposit, excluding the default period. However, there shall be no order as to costs.

10. The second respondent/Insurance Company is directed to deposit the entire amount of compensation as enhanced by this Court above along with interest from the date of petition till the date of deposit, less the amount, if any, already deposited, to the credit of the claim petition within a period four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter. The Court fee due shall be paid by the claimant, before obtaining copy of the Judgment.

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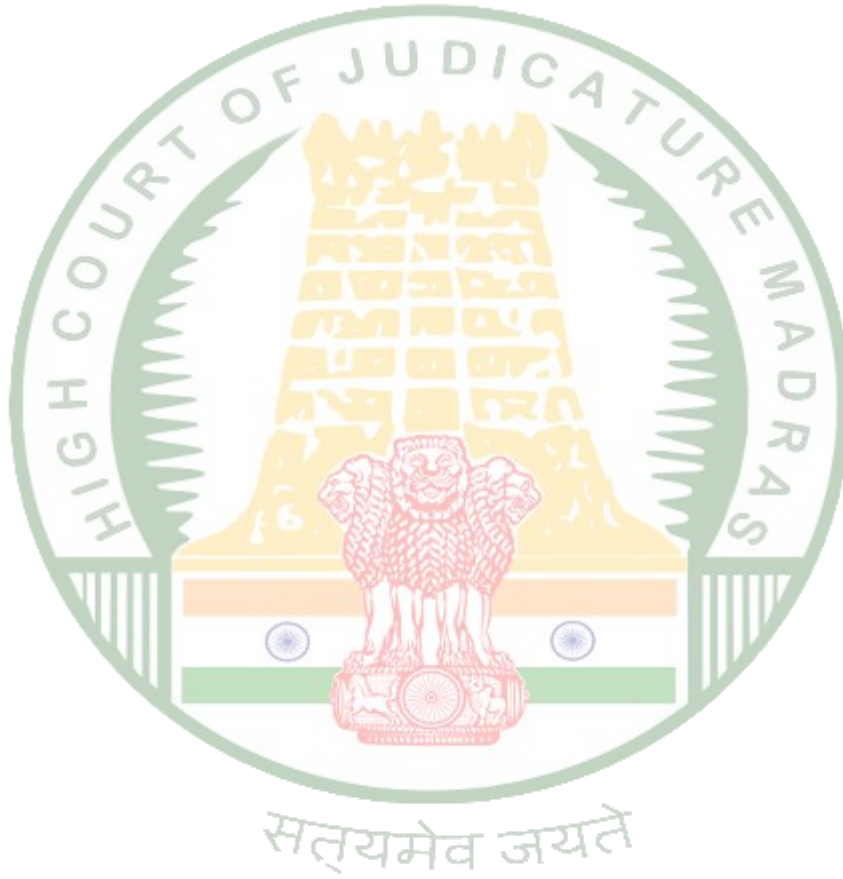
16.02.2017

Index : Yes/No

arr/GLN

To

1. The Motor Accident Claims Tribunal,
(VI Small Causes Court), Chennai.
2. The Section Officer, VR Section,
High Court, Madras.



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DR. S.VIMALA, J.

arr/GLN



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