

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.12.2017
CORAM:
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A. No.1235 of 2007

Jawahir Hassan

..Appellant/Petitioner

Versus

1.M.Jagadeesan

2.The New India Assurance Co. Ltd.,
No.45, Moore Street,
Chennai - 600 001.

...Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the fair and decreetal order passed by the V Small Causes Judge, Motor Accident Claims Tribunal at Chennai in M.C.O.P. No.1722 of 2004 dated 15.06.2006.

For Appellant : Mr.S.Parthasarathy

For Respondent 2 : M/s.C.Harini
for Mr.N.Vijayaraghavan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/claimant to set aside the fair and decreetal order passed by the V Small Causes Judge, Motor Accident Claims Tribunal at Chennai in M.C.O.P. No.1722 of 2004 dated 15.06.2006.

2. The brief facts of the case is that on 09.12.2003 at about 16.30 hrs, the claimant/appellant herein was riding the motor cycle bearing regn. No.TN-04-W-4076 from Thiruvidandhai to Palavakkam. When he was proceeding near ECR Road, Kovalam Junction, the first respondent's lorry bearing regn. No.TN21-S-5097, coming in the opposite side, driven by its driver in a rash and negligent manner, dashed against the motor cycle, due to which the claimant/appellant herein, the rider of the motor cycle, sustained serious injuries and the injured/appellant claimed the compensation for a sum of Rs.9,00,000/- for the injuries sustained by him.

3. The Tribunal on consideration of materials and evidence available viz., discharge summary, medical bills and disability certificate awarded a sum of Rs.1,96,000/- with interest at 7.5% per annum to the claimant in MCOP.No.1722 of 2004 under the following heads:-

Loss of income	Rs.	24,000/-
For transportation charges	Rs.	1,000/-
For Nutritious Food	Rs.	1,000/-
For Medical expenses	Rs.	1,15,000/-
For pain and sufferings	Rs.	15,000/-
For Partial permanent disability	Rs.	40,000/-

	Rs.	1,96,000/-

4. Aggrieved over the same, the appellant herein/claimant, has filed the present appeal, questioning the quantum of compensation with regard to permanent disability, loss of income and the meager amount that was awarded towards transport and extra nourishment though sufficient bills have been produced for medical expenses no amount had been awarded for future operation and the amount awarded under the head pain and sufferings is also very meager.

5. The learned counsel for the appellant argued that the injuries are all over the body and fracture in right hip, in right thigh and in right ankle.

6. PW2 is the Doctor, who examined the appellant and issued the disability at 40%. It is the argument of the appellant that the appellant had severe fracture on his hip bone and permanent disability and the reduction of hip bone. The Doctor has assessed it as 45%. It is also the evidence that the appellant has to undergo surgery for the removal of the rod that has been fixed for the injury caused due to the accident.

7. Hence, considering the nature of injury and the disability that caused on him, 40% Disability considered by the Tribunal is enhanced and modified to the effect that Rs.2,000/- per percentage will be a reasonable one and it is arrived as Rs.80,000/-. In the same way, while considering the transport expenses, the award of the Tribunal appears to be meagre and the same is enhanced to Rs.5,000/- and the sum awarded for nourishment is also quite meager and the same is also enhanced to Rs.5,000/-. Hence, the amount awarded by the Tribunal is modified and enhanced.

8. It is perused from the evidence that the injured person has sustained injury of fracture on his hip and the movement of the leg also restricted and he also suffers pain and the percentage considered by the Tribunal at 40% has been taken for consideration as Rs.2,000/- per percentage, which could be a reasonable one for the severe injury that has been sustained by the claimant and also for the painful treatment and the

difficulty he is suffering, even after the treatment and it is calculated as Rs.2,000/- per percentage for the disability at the rate of 40% is Rs.80,000/-.

9. Considering the nature of injury, the transport charges can be fixed at Rs.5,000/- and for the nourishment a sum of Rs.5,000/- can be a reasonable amount. The award passed by the Tribunal under the other heads are remain as such. Hence, the amount awarded by the Tribunal is modified from Rs.1,96,000/- to Rs.2,44,000/- as follows:

Heads	Amount awarded by the Tribunal	Enhanced Amount
Loss of income	Rs. 24,000/-	Rs. 24,000/-
Transportation Charges	Rs. 1,000/-	Rs. 5,000/-
Nutritious Food	Rs. 1,000/-	Rs. 5,000/-
Medical Expenses	Rs. 1,15,000/-	Rs. 1,15,000/-
Pain and Sufferings	Rs. 15,000/-	Rs. 15,000/-
Partial permanent disability	Rs. 40,000/-	Rs. 80,000/-

10. In the result, Civil Miscellaneous Appeal is partly allowed by enhancing the quantum of compensation from Rs.1,96,000/- to 2,44,000/-, which is payable with interest at 7.5% per annum from the date of petition till the date of deposit. The second respondent/insurance company is directed to deposit the said sum to the credit of the Tribunal below within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit, the Tribunal is directed to transfer the amount from the compensation account to the saving bank account of the claimant. The Court fee for the enhanced compensation amount shall be paid by the claimant. The claimant is not entitled to any amount for the default period. No costs.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

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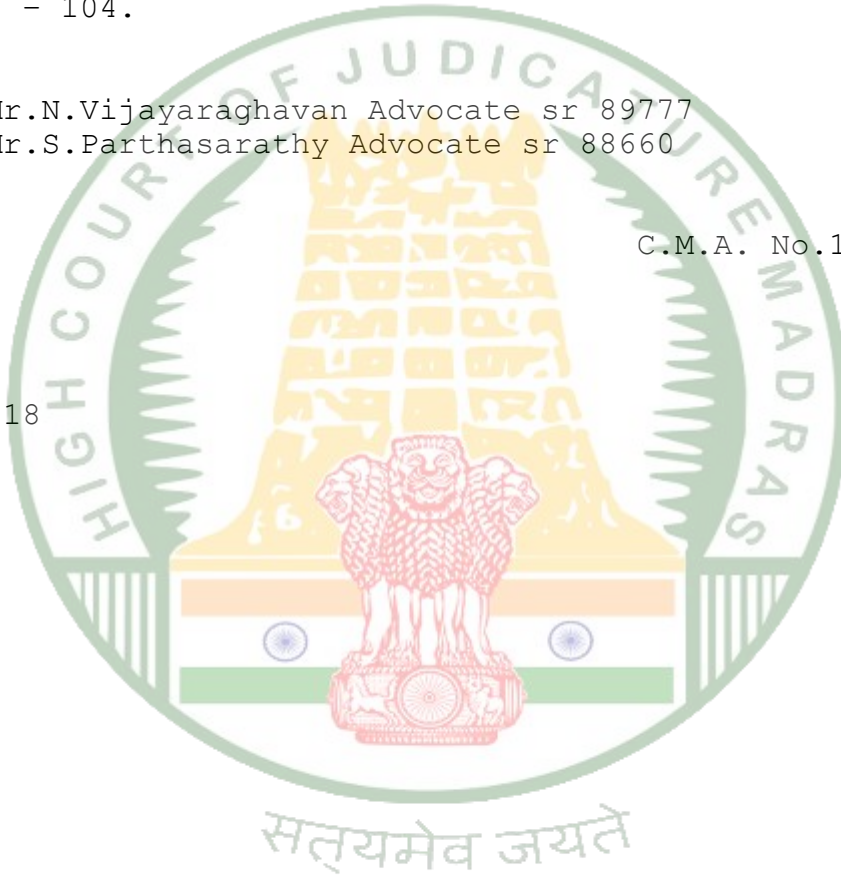
To

1. The V Small Causes Judge,
Motor Accident Claims Tribunal,
Chennai
2. The Section Officer,
V.R. Section,
High Court,
Madras - 104.

+1 cc to Mr.N.Vijayaraghavan Advocate sr 89777
+1 cc to Mr.S.Parthasarathy Advocate sr 88660

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