

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 03.02.2017

Judgment Pronounced on: 15.09.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.1263 of 2008

K.Palani

...Appellant/Petitioner
Vs

1. A.K.A.Transport,
64, Telugu Chetty Street,
Chennai - 600 021.
2. The United India Insurance Co., Ltd.,
38, Anna Salai,
Chennai-600 002. ...Respondents/Respondents

Prayer:- Civil Miscellaneous Appeals have filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decretal order dated 19.10.2007 made in M.C.O.P.No.4625 of 2002 on the file of the Motor Accidents Claims Tribunal, (Fast Track Court No.III), Chennai.

For Appellant : Ms.Ramya V.Rao
for Mr.A.N.Viswanatharao

R1 : No Appearance

For R2 : Mr.C.Paranthaman

JUDGMENT

On 07-03-2002, a cyclist was hit by an ambassador car belonging to the first respondent and insured with the second respondent leading to the former suffering injuries. The injured cyclist then moved the Tribunal seeking compensation of Rs.10,00,000/- whereas, the Tribunal has passed an award for Rs.1,44,000/- payable with interest at 7.5% per annum. He was a mason by avocation and was aged 42 years at the relevant time. He suffered fracture of right elbow, right humerus bone and also crush injuries having a dimension of 10 X 7 cms., about his right elbow. Ext.P-3 photograph shows the nature of injury that a lay man may appreciate. P.W-2, the doctor, however, has looked into the medical aspect of the injury and has determined percentage of disability that the claimant had suffered at 85%. The Tribunal, even though has entered a finding that the nature of injury that the claimant/appellant has suffered was such that he might not be able to engage in the same avocation, yet

reduced the percentage of his permanent disability to 50%. Then it proceeded to pass the award on various heads as tabulated below:-

Heads	Award Amount (Rs.)
Medical Expenses	2,000.00
Loss of income	18,000.00
Nutrition	2,000.00
Transportation	2,000.00
Pain and Suffering	25,000.00
Mental agony	10,000.00
Permanent disability 50%	85,000.00
Total	1,44,000.00

While granting its award on the head of permanent disability the Tribunal has not explained how it arrived at Rs.85,000/- as compensation.

2. The primary objection of the learned counsel of the appellant was directed against the methodology adopted by the Tribunal in assessing the compensation for permanent disability. She argued that when the Tribunal, which had the opportunity of witnessing the claimant himself, has come to the conclusion that with his injuries the claimant might not be able to engage in the same avocation, has still without any rationale proceeded not to treat the injury as functional disability but only as ordinary, grievous injury. This learned counsel submitted that this head needs a correction.

3. Per contra, the learned counsel for the second respondent/Insurance Company submitted that this case cannot be treated as a case of functional disability since there is hardly any medical opinion that the appellant was incapable of engaging in the same profession in which he was.

4. There is adequate justification for the appellant to feel aggrieved. P.W.2, the doctor who has evaluated the disability of the claimant has deposed that his right humerus bone has not fused properly and that he could not even wear his shirt. There is no contra evidence available on record to offset the value of the evidence of P.W.2. Now, what kind of job that someone in the position of the claimant can do, at an age beyond 42 years? In terms of the ratio in Rajesh Kumar Vs Ajay Kumar and another [(2011) ACJ 1], his functional disability should be fixed at least at 85%. Taking his monthly income at Rs.2,500/-, the compensation awardable on the head of loss of

future earning capacity is (Rs.2500 x 12 x 14 x 85%) Rs. 3,57,000/-. He was in the hospital for close to three months and necessarily the compensation payable for pain and suffering requires to be enhanced to Rs.1,00,000/-. As regards compensation on other heads that which has been awarded by the Tribunal is retained. The award amount is accordingly re-worked as shown below:

Heads	Award Amount (Rs.)
Medical Expenses	2,000
Loss of income	18,000
Nutrition	2,000
Transportation	2,000
Pain and Suffering	1,00,000
Mental agony	10,000
Loss of future earning capacity	3,57,000
Total	4,91,000

5. In the result, this appeal is partially allowed and the compensation awarded is enhanced from Rs. 1,44,000/- to Rs.4,91,000/-. The respondents are directed to deposit the enhanced amount with interest at 7.5% per annum and the same is directed to be deposited within six weeks from the date of receipt of a copy of this order, whereupon the claimant would be entitled to withdraw the same forthwith. The claimant is directed to pay necessary court fee for the enhanced portion of compensation. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Fast Track Court No.III,
Chennai.

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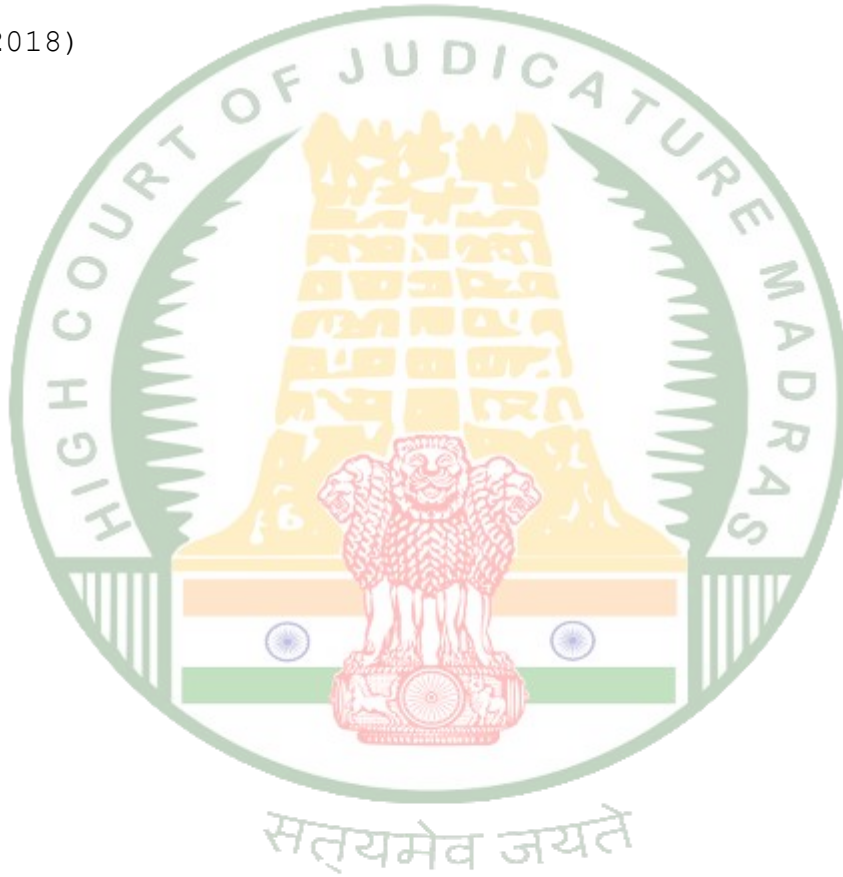
2. The Section Officer,
V.R.Section, High Court, Madras.(2 copies)

3. The United India Insurance Co. Ltd
38, Anna Salai, Chennai 2.

+1 Cc to Mr.C. Paranthaman, advocate sr 67418.

C.M.A.No.1263 of 2008

BR(CO)
SP(20/02/2018)



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