

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.10.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM
and
THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.M.A No.565 of 2013 and C.M.A.No.1259 of 2011
and
M.P.No.1 of 2011

C.M.A.No.565 of 2013

C.P.Moidu
S/o.Kalanthu

... Appellant/Petitioner

vs.

1.Musthafa
S/o.Moiden Kunhi Haji

2.P.N.Prem Kumar

3.The New India Assurance Co. Ltd.,
Kozhikode.
(Policy No.761300/31/83/
03/0001633)

... Respondents/Respondents

(Respondents 1 and 2 were set
ex-parte before the lower Court)

Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 14.09.2010 passed in M.C.O.P.No.7 of 2008 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Mahe, Pondicherry (Union Territory) to enhance the award amount from Rs.12,97,533/- to Rs.40,10,000/-.

C.M.A.No.1259 of 2011

The New India Assurance Co. Ltd.,
Kozhikode.

... Appellant/3rd Respondent

vs.

1.C.P.Moidu
S/o.Kalanthu

2.Musthafa
S/o.Moideenkunhi Haji

3.P.N.Prem Kumar

... Respondents/Petitioner/
Respondents 1&2

(Respondents 2 and 3 were set
ex-parte before the lower Court)

Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 14.09.2010 passed in M.C.O.P.No.7 of 2008 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Mahe, Pondicherry (Union Territory).

Appearance:

For Appellant in C.M.A.No.565 of 2013

and for first respondent
in C.M.A.No.1259 of 2011 : Mr.M.Kother Adam

For Appellant in C.M.A.No.1259 of 2011

and for third respondent
in C.M.A.No.565 of 2013 : Mr.M.Krishnamoorthy

COMMON JUDGMENT

(Judgment of the Court was delivered by C.T.SELVAM. J)

These appeals have been preferred against Judgment and Decree dated 14.09.2010 passed in M.C.O.P.No.7 of 2008 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Mahe, Pondicherry (Union Territory).

2. Appellant in C.M.A.No.565 of 2013 is the claimant and is hereinafter referred as such. Third respondent in such appeal is the Insurance Company.

3. The short facts of the case are as follows:

Claimant was travelling on a Motorcycle bearing Registration No.KL-58-1137 as a pillion rider from Azhiyur towards Mahe Bridge on 15.04.2007 at about 14.30 hours when a lorry bearing Registration No.KL 11 J-3119 driven in a rash and negligent manner, hit the motorcycle, while attempting to overtake it.

Claimant sustained grievous injuries and multiple abrasions on the right knee. Claimant immediately was taken to Government Hospital, Mahe and thereafter, referred to Indira Gandhi Co-operative Hospital, Thalassery. Owing to grievousness of injuries, claimant again was referred to Baby Memorial Hospital, Kozhikode, where his right knee was amputated. He filed a claim petition before the Tribunal claiming compensation of Rs.40,10,000/-.

4. Before Tribunal, claimant examined himself as P.W.1 and P.Ws.2 and 3 and the following exhibits were marked:

- (1)Ex.P1 : Copy of FIR in Crime No.36/2007 registered at Mahe Police Station
- (2)Ex.P2 : Copy of Wound Certificate
- (3)Ex.P3 : Discharge Slip of P.W.1 issued by Baby Memorial Hospital
- (4)Ex.P4 : Passport of claimant
- (5)Ex.P5 : Driving license of the claimant
- (6)Ex.P6 : Quotation for Endolite above knee prosthesis
- (7)Ex.P7 : Medical Bills (series) (139 Nos.)
- (8)Ex.P8 : Disability certificate issued by Baby Memorial Hospital
- (9)Ex.P.9 : Certificate issued by Branch Manager, Endolite, P & O Centre.

On the side of third respondent Insurance company, one witness was examined and following exhibits were marked:

- (1)Ex.R1 : Insurance Certificate of vehicle bearing Registration No.KL 11 J 3119
- (2)Ex.R2 : Driving license of the first respondent
- (3)Ex.R3 : Copy of Crime Detail Form
- (4)Ex.R4 : Copy of F.I.R. in Cr.No.36/2007

5. On appreciation of materials before it, Tribunal awarded compensation as follows:

(a)For permanent disability	:	Rs. 9,60,000/-
(b)Towards medical bills	:	Rs. 2,11,533/-
(c)For pain and suffering	:	Rs. 75,000/-
(d)For loss of earnings during treatment	:	Rs. 30,000/-
(e)Bystander expenses	:	Rs. 10,000/-
(f)Transportation charges	:	Rs. 5,000/-
(g)Nutritious food	:	Rs. 5,000/-
(h)Loss of clothes	:	Rs. 1,000/-

Rs. 12,97,533/-

The said sum of Rs.12,97,533/- was directed to be paid with interest at 7.5% p.a. from the date of petition till the date of deposit.

6. Seeking enhancement of compensation, claimant has filed C.M.A.No.565 of 2013. Challenging the quantum of award, Insurance Company has filed C.M.A.No.1259 of 2011.

7. Heard learned counsel for claimant and learned counsel for third respondent/Insurance Company and perused materials available on record.

8. Learned counsel for claimant submitted that the Tribunal failed to take note of medical expenses of Rs.5,81,347.88 and without considering Ex.P.7, mechanically awarded only a sum of Rs.2,11,533/- towards medical bills. Tribunal also failed to take note of income of the claimant. He earned a sum of Rs.20,000/- at the time of accident. Ex.P5, International Driving License and Ex.P6, Passport of claimant, were not properly considered and the monthly income of claimant wrongly was fixed at Rs.5,000/-. Learned counsel further submitted that Tribunal erred regards age of claimant and application of multiplier for calculating pecuniary loss and prayed that this Court enhance the compensation awarded by the Tribunal.

9. Learned counsel for third respondent Insurance Company submitted that claimant has not produced any proof regarding his age, employment and income and the award of the Tribunal is excessive on several counts.

10. We have considered the rival submissions.

11. Court below has fallen into error in allowing a sum of Rs.1,89,800/-towards fitment of an artificial limb for the claimant in the absence of any proof there regards. Tribunal is not justified in allowing only a sum of Rs.2,11,533/- towards claimant's medical bills. Claimant has appeared before this Court and it was seen that he has suffered amputation of the right leg at the knee joint. Ex.P3, Discharge Summary, issued by a private hospital informs that claimant was admitted on 15.04.2007 and discharged only on 27.06.2007 and had undergone several surgeries as exhibited in Ex.P7, medial bills (series) (139 Nos.). In the circumstances, it would be appropriate to grant the claimed sum of Rs.5,81,347.88/- (rounded off to Rs.5,81,348/-) towards medical expenses. Although claimant has not been able to specifically prove that he was engaged as a driver in the United Arab Emirates, we find that Ex.P5 - Driving License of petitioner dated 30.01.2006 issued by United Arab Emirates informs his profession as 'mason-general' while Ex.P4 - Passport informs his travels to the UAE and Dubai. One does not

leave home and travel abroad to idle. It is only when employment abroad is more remunerative that one is inclined to stay abroad. We find it reasonable and appropriate to place the earning of the claimant at Rs.10,000/- p.m. As Ex.P4 - Passport informs the date of birth of claimant to be 28.05.1977, the proper multiplier to be adopted is 17. Accordingly, permanent disability is calculated at Rs.20,40,000/- (10,000*12*17). The modified compensation amount is as follows:

(a) For permanent disability:	Rs.20,40,000/-
(b) Medical expenses	: Rs. 5,81,348/-
(c) Pain and suffering	: Rs. 75,000/-
(d) Loss of earnings	
during treatment	: Rs. 30,000/-
(e) Bystander expenses	: Rs. 10,000/-
(f) Transportation charges	: Rs. 5,000/-
(g) Nutritious food	: Rs. 5,000/-
(h) Loss of clothes	: Rs. 1,000/-

	Rs.27,47,348/-

The said sum of Rs.27,47,348/- was directed to be paid with interest at 7.5% p.a. from the date of petition till the date of deposit.

In the result,

- (i) C.M.A.No.565 of 2013 is allowed to the extent indicated above. Third respondent insurance company is directed to deposit the enhanced amount with interest, less that already deposited, within a period of eight weeks from the date of receipt of this judgment. Claimant is at liberty to withdraw such amount on due application.
- (ii) C.M.A.No.1259 of 2011 is dismissed.

No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

cla/gm

To

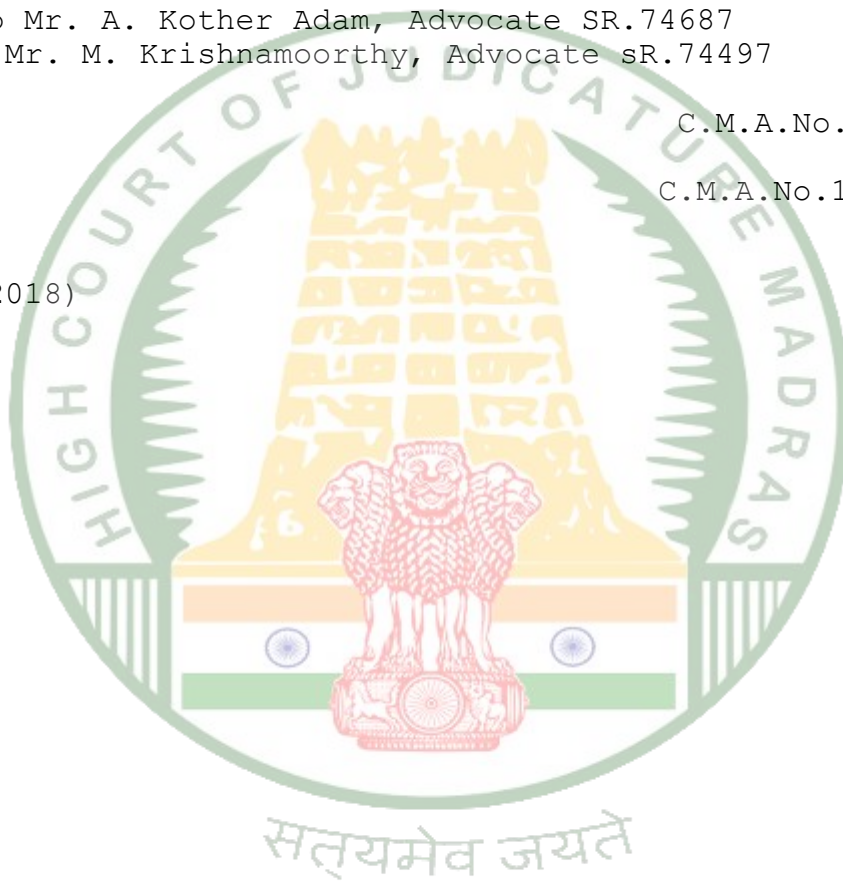
The Subordinate Judge,
Motor Accidents Claims Tribunal,
Mahe.

Copy to: The Record Keepr, Vr Section,
High Court, Madras.

+ 1 cc to Mr. A. Kother Adam, Advocate SR.74687
+ 1 cc to Mr. M. Krishnamoorthy, Advocate sR.74497

C.M.A.No.565 of 2013
and
C.M.A.No.1250 of 2011

AS(CO)
EU(17/01/2018)



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