

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.2905 of 2003

M.T.Varghese

... Appellant/Petitioner

Vs

1.A.Thomas

2.K.K.Kunha Hameed alias K.K.Kunhimohammed

3.The New India Assurance Company Ltd.,
Regional Office : 188-189, Obili Towers,
D.B.Road, R.S.Puram, Coimbatore - 641 002.

[R1 & R2 remained ex parte before the Tribunal]

... Respondents/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree of the Motor Accident Claims Tribunal (First Additional Subordinate Judge), Coimbatore, dated 29.7.2002 in MCOP.No.250 of 1998.

For Appellant : Mr.N.E.A.Dinesh
for Mr.V.Nicholas

For Respondents : MR.D.VENUGOPAL For R3
not ready Notice for R1 & 2

JUDGMENT

The claimant has approached this Court seeking enhancement of compensation awarded to him by the Motor Accident Claims Tribunal for the injuries that he had suffered when he was knocked down by a lorry while he was travelling as a pillion rider in a two wheeler on 03-10-1997.

2. For the injuries suffered, the appellant had approached the Tribunal with a claim of Rs.11,00,000/-, whereas the Tribunal has passed an award for Rs.3,34,359/- payable with interest at 9% per annum. Aggrieved by the inadequacy of the compensation, the claimant has approached this Court.

3. In the said accident the appellant had suffered multiple fractures to his left hip joint, for which he had undergone prolonged hospitalization and underwent as many as 10 corrective surgeries. The claimant was working as a machinist and was

earning Rs.2,100/- per month at that relevant time and the accident has rendered him invalid for any employment, that his employer relieved him of his job. P.W.3, the doctor who assessed the disability of the claimant at 40%, but the Tribunal has passed an award for Rs.25,000/- on this head; for pain and suffering it has awarded Rs.25,000/-; for loss of earning it has reckoned Rs.2,100/- as his salary as disclosed by Ext.P20-salary certificate, deducted one third of it and arrived at loss of earning only for five months at Rs.7,000/-. On the head of expenditure incurred on extra nourishment Rs.10,000/- was awarded and towards medical expenses it has granted Rs.2,66,859; towards damage to wrist watch it granted Rs.500/-; whereas for transport it granted nothing.

4. After considering the evidence on record, the Tribunal awarded the following compensation under various heads indicated :

Heads	Amount Awarded (Rs.)
Loss of income for 5 months @ Rs.1400/- per month	7,000
Towards nourishment	10,000
Damage to Wrist Watch	500
Towards Medical Expenses (as per Ext.P.13)	2,66,859
Towards Pain and Suffering	25,000
Towards disability	25,000
Total	3,34,359

5. Heard both sides. This Court observed atleast two fundamental error in the approach of the Tribunal : (a) a hip fracture which required as many as 10 corrective surgeries has been considered only as a grievous injury and the Tribunal has not appreciated the doctor's certificate as to the extent of the permanent injury suffered by the injured/claimant pointedly. (b) that it has deducted 1/3rd of the salary in quantifying the loss of earning of the claimant. For pain and suffering the compensation paid is meagre.

6. On going through the evidence and given the nature of the injuries this Court decides that it is a case of partial permanent disability and fixes the percentage of disability at 40%. The accident had occurred when the claimant was 33 years old. Accordingly, the compensation payable on this head would be (Rs.2100 x 12 x 16x 40%) Rs.1,61,280/-. On the head of loss of earning, compensation is awarded for 12 months and this is

determined at (Rs.2,100/- x 12) Rs.25,200/-. For pain and suffering, compensation is enhanced to Rs.1,00,000/-. Towards transportation Rs.10,000/- is awarded. On the heads of medical expenses, extra nourishment and other damages, the award of the Tribunal remains unaltered.

Heads of compensation	Amount Enhanced (Rs.)
Functional disability	1,61,280
Pain and suffering	1,00,000
Loss of income for 12 months	25,200
Transportation	10,000
Extra nourishment	10,000
Damages to wrist watch	500
Medical expenses	2,66,859
Total :	5,73,839

7. In the result, the appeal is partially allowed and the award amount is enhanced from Rs.3,34,359/- to Rs.5,73,839/-. The third respondent/Insurance company is directed to deposit Rs.5,73,839/-, less if any already deposited, with interest at 9% per annum to the appellant/claimant within a period of six weeks from the date of receipt of a copy of this order, whereupon the claimant is permitted to withdraw the same forthwith. The appellant is also directed to pay the necessary court fee for the enhanced compensation amount if any. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The 1st Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Coimbatore.

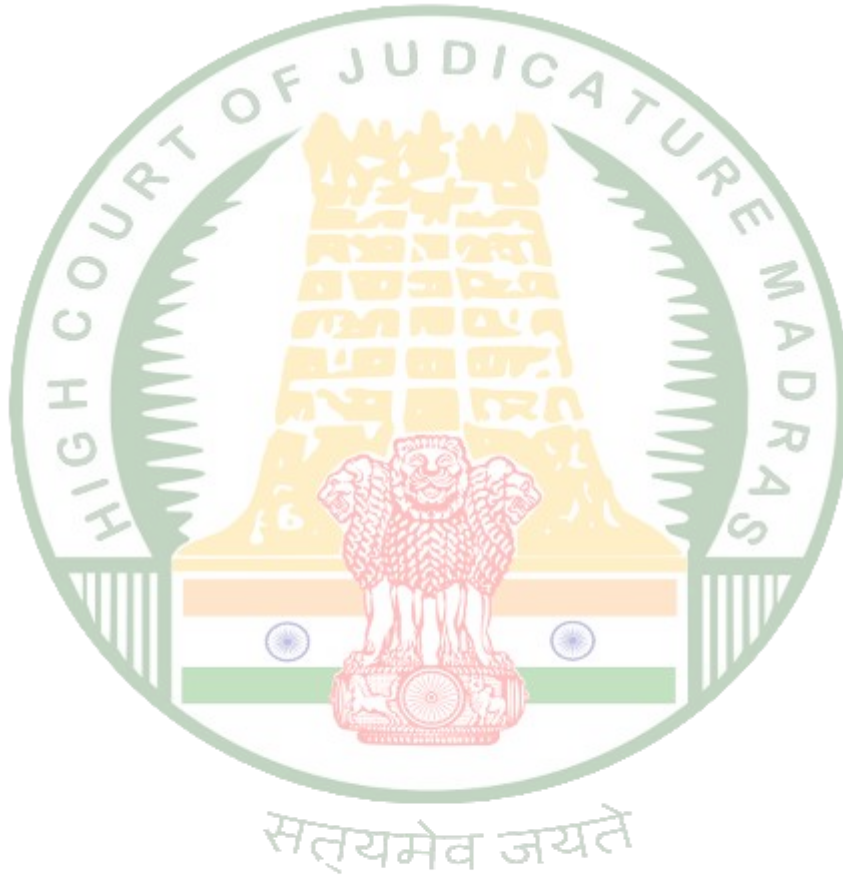
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The Section Officer,
VR Section, High Court, Madras (2 COPIES)

+1cc to Mr.V.NICHOLAS, Advocate, S.R.No. 1416

CMA.No.2905 of 2003

VG I(CO)
TR(30/08/2018)



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