

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.594 of 2008

E.Padmanabhan

... Appellant/Claimant

..Vs..

1.M.Ponnambalam

2.National Insurance co. Ltd.,
No.46, Moore Street,
Chennai - 600 001.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in O.P.No.5480 of 2001 dated 13.02.2007 on the file of the IV Judge, Small Causes Court (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.A.Shanmugaraj

For Respondent 2 : Mr.S.Vadivel

Not ready in notice for R1

J U D G M E N T

The instant appeal has been filed by the claimant seeking enhancement of compensation awarded under the impugned Award dated 13.02.2007 by the Motor Accident Claims Tribunal, (IVth Judge, Court of Small Causes, Chennai) in MCOP.No.5480 of 2001.

The brief facts leading to the filing of the instant appeal are as follows:

2. The Appellant sustained injuries as a result of an accident that took place on 09.04.2001 while he was riding a motor cycle and the accident was caused by a lorry bearing registration No.TN27-Y-7146 owned by the first respondent and insured with the second respondent. The Appellant preferred a claim before the Motor Accident claims Tribunal seeking a compensation of Rs.2,00,000/-. The Motor Accident Claims Tribunal by its Award dated 13.02.2007 in MCOP.No.5480 of 2001

directed the second respondent to pay the Appellant a sum of Rs.1,23,300/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

3. Aggrieved by the quantum of compensation awarded by the Tribunal, the instant appeal has been filed by the claimant seeking enhancement of compensation.

4. Heard, Mr.A.Shanmugaraj, learned counsel for the Appellant and Mr.S.Vadivel, learned counsel for the second respondent. The first respondent being the owner of the insured vehicle remained ex parte before the Tribunal. There is no representation on the side of the first respondent. Notice sent to the first respondent has been returned with an endorsement "No such person".

5. According to the learned counsel for the Appellant, compensation awarded by the Tribunal under various heads under the impugned Award is an inadequate compensation. According to the learned counsel for the Appellant, the Appellant sustained both bones fracture in right leg, cut injuries in left leg and also sustained head injuries, as a result of an accident caused by the insured vehicle. According to the learned counsel for the Appellant, at the time of the accident, the Appellant was 39 years old and was an agriculturist, earning a monthly income of Rs.5,000/-. According to the learned counsel for the Appellant, even though the Appellant's disability has been assessed by the Doctor at 50%, the Tribunal on its own, without any basis, has assessed the disability of the Appellant only at 40% and has awarded an inadequate compensation under various heads. According to the learned counsel for the Appellant, the multiplier method ought to have been adopted by the Tribunal while assessing the compensation payable to the Appellant.

6. Per contra, learned counsel for the second respondent insurance company would submit that the accident happened in the year 2001 and considering the year of the accident and also considering the age and avocation of the Appellant, at the time of the accident, the Tribunal has awarded a just compensation to the Appellant.

7. This Court after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the respective counsels, observes the following:

a) The Tribunal has given a categorical finding that only due to the rash and negligent driving by the driver of the vehicle insured with the second respondent, the accident had

happened which resulted in the injuries sustained by the Appellant.

b) The nature of injuries sustained by the Appellant has not been disputed by the second respondent before the Tribunal.

c) Admittedly, the Appellant has sustained both bones fracture in right leg, cut injuries in left leg and also sustained head injury as a result of the accident.

d) The disability certificate was also produced by the Appellant before the Tribunal which was marked as Ex.P12 and as per the disability certificate, the Appellant's disability was assessed at 50% by the Doctor. Even though the Appellant's disability was assessed by the Doctor at 50%, the Tribunal on its own, without any basis has reduced the disability from 50% to 40%. No contra evidence was also produced by the second respondent before the Tribunal to disprove the percentage of disability suffered by the Appellant as a result of the injuries sustained by him due to the accident.

e) This Court by its order dated 24.09.2018, directed the Appellant to be personally present before this Court today (08.10.2018). As directed by this Court, the learned counsel for the Appellant produced the Appellant before this Court today. On seeing the Appellant, this Court noticed that even now, the Appellant continues to use a walking stick and scars remain on both his legs. It is also noticed that the Appellant limps while he is walking.

f) In the claim petition, the Appellant claimed that he was an agriculturist, earning a monthly income of Rs.5,000/-, at the time of the accident. Since no document was produced by the Appellant before the Tribunal to establish that he was earning a monthly income of Rs.5,000/-, the Tribunal has assessed the monthly income of the Appellant at Rs.3,000/-, on notional basis.

g) Being an agriculturist and considering the nature of injuries sustained by the Appellant which has not healed even now and he is having some discomfort, the Tribunal ought to have awarded a higher compensation to the Appellant.

h) Under the impugned Award, the Tribunal has awarded only a sum of Rs.12,000/- towards loss of earnings for the treatment period calculated for four months. In the considered view of this Court, considering the nature of injuries sustained by the Appellant, six months ought to have been taken by the Tribunal as the period during which the Appellant would not have been able to earn any income for his livelihood.

i) Further under the impugned Award, the compensation awarded by the Tribunal towards Transportation charges and Extra nourishment is also low, which will have to be enhanced by this Court.

j) Further under the impugned Award, the Tribunal has not awarded any compensation towards loss of amenities and attender charges and in the considered view of this Court, the same will have to be granted to the Appellant as compensation.

8. In the light of the above observations, this Court is of the considered view that the compensation awarded by the Tribunal under the impugned Awarded will have to be enhanced in the following manner:

Head	Amount awarded by the Tribunal	Modified Award Amount
Loss of earning for the treatment period	Rs.12,000/- (Rs.3000 X 4)	Rs.18,000/- (Rs.3000 X 6)
Transport to Hospital	Rs.1,000/-	Rs.1,500/-
Extra Nourishment	Rs.1,000/-	Rs.6,200/-
Medical Expense	Rs.49,300/-	Rs.49,300/-
Pain & Suffering	Rs.10,000/-	Rs.10,000/-
Permanent Disability	Rs.50,000/-	Rs.50,000/-
Loss of Amenities	Nil	Rs.20,000/-
Attender Charges	Nil	Rs.5,000/-
Total	Rs.1,23,300/-	Rs.1,60,000/-

9. In the light of the above observations, the amount awarded by the Tribunal is enhanced from Rs.1,23,300/- to Rs.1,60,000/- and the second respondent is directed to deposit the Award amount of Rs.1,60,000/-, after deducting the amount already deposited, together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit, to the credit of MCOP.No.5480 of 2001 on the file of the Motor Accident Claims Tribunal, IV Judge, Small Causes Court Chennai, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Appellant is permitted to withdraw the amount along with accrued interest

lying to the credit of MCOP.No.5480 of 2001 by filing an appropriate application.

10. Accordingly, the appeal is partly allowed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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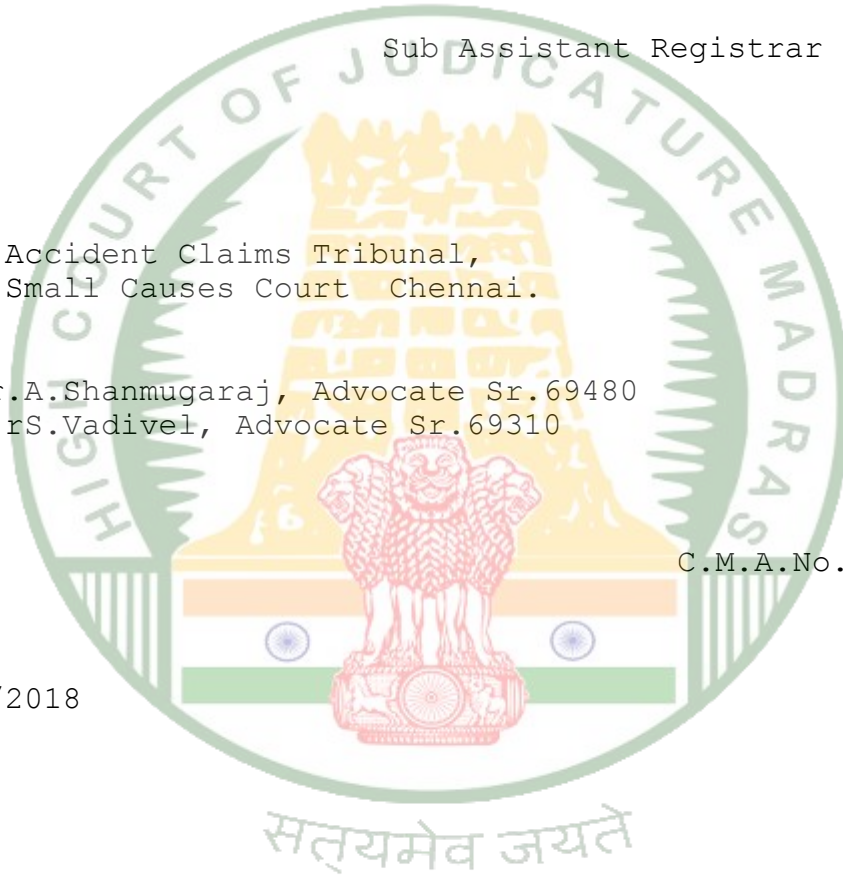
The Motor Accident Claims Tribunal,
IV Judge, Small Causes Court Chennai.

+1cc to Mr.A.Shanmugaraj, Advocate Sr.69480

+1cc to M.rS.Vadivel, Advocate Sr.69310

C.M.A.No.594 of 2008

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srg 13/11/2018



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