

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2018

CORAM:

THE HONOURABLE Mr.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2012 of 2009

R.Sangeetha

...Appellant

Vs

1. B.Vanitha

2. National Insurance Company Limited,
Rep by its Branch Manager, Branch III,
Thanthai Periyar Market Complex,
Govindasamy Pillai Street,
Near Old Bus Stand, Salem 636 001

3. The Managing Director,
State Express Transport Corporation Limited,
Pallavan Salai, Chennai 600 002

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 20.12.2007 made in M.A.C.T.O.P.No.136 of 2007 on the file of the Principal District Judge (Motor Accident Claims Tribunal) at Perambalur insofar as rejecting the claim of the appellant to that of the claim of Rs.13,120/- praying to set aside the same and allow the C.M.A.

For Appellant : Mr.F.Terry
for Mr.P.Thamizhendhi

For Respondent-2 : Mr.J.Chandran

For Respondents 1 and 3: No Appearance

JUDGMENT

The instant appeal has been filed by the claimant challenging the quantum of compensation awarded by the Tribunal under the impugned award dated 20.12.2007 passed by the Motor Accident Claims Tribunal, Perambalur in M.A.C.T.O.P.No.136 of 2007.

2. The brief facts leading to the filing of the instant appeal are as follows;

(i) The appellant sustained injuries on 19.04.2006 as a result of an accident, caused by a HGV Tanker lorry bearing Registration No.TN-04-D-6363 owned by the first respondent and insured with the second respondent. The appellant preferred a claim before the Motor Accident Claims Tribunal in M.A.C.T.O.P.No.136 of 2007 seeking a compensation of Rs.40,000/- (Rupees forty thousand only).

(ii) The Motor Accident Claims Tribunal, by its Award dated 20.12.2007 passed in M.A.C.T.O.P.No.136 of 2007, directed the second respondent to pay the appellant, a sum of Rs.13,120/- (Rupees thirteen thousand one hundred and twenty only) together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

(iii) Aggrieved by the quantum of compensation awarded by the tribunal, the instant appeal has been filed by the claimant seeking enhancement of compensation.

3. Heard Mr.F.Terry, learned counsel appearing for Mr.P.Thamizhendhi, learned counsel for the appellant and Mr.J.Chandran, the learned counsel for the second respondent-Insurance Company.

4. According to the learned counsel for the appellant, the appellant lost one of his teeth as a result of the accident caused by a lorry insured with the second respondent. Due to the loss of teeth, there was permanent disfigurement and according to him, considering the nature of the injury sustained by the appellant, the quantum of compensation awarded by the Tribunal is very low.

5. According to the learned counsel for the appellant, even in the case of no fault liability under Section 140 of the Motor Vehicles Act, a sum of Rs.25,000/- (Rupees twenty five thousand only) has to be paid as compensation, whereas, under the impugned award, the Tribunal has awarded only a sum of Rs.13,120/- (Rupees thirteen thousand one hundred and twenty one only) to the appellant. Further, at the time of the accident, the appellant was only 18 years old.

6. Per contra, the learned counsel for the second respondent-Insurance Company would submit that the appellant had lost only one teeth and therefore, the Tribunal has adequately compensated him under the impugned award.

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

following;

a. The nature of injury sustained by the appellant has not been disputed by the second respondent-Insurance Company before the Tribunal.

b. The appellant has filed four documents pertaining to her which are marked as P8, P9, P10 and P11. The documents included

the O.P.Sheet, prescription from the Doctor and medical bills. On the side of the second respondent, no documents were marked. The appellant has also examined herself as a witness before the Tribunal. Even though the appellant had claimed a sum of Rs.40,000/-, the Tribunal has awarded only a sum of Rs.13,120/- as compensation. The Tribunal has not given reasons as to how it has assessed the compensation payable to the appellant at Rs.13,120/-. The loss of teeth would have permanently disfigured the appellant that too at a very young age of 18. No artificial teeth can match the look of an original teeth.

c. As rightly contended by the learned counsel for the appellant, even for no fault liability under Section 140 of the Motor Vehicles Act, a compensation of Rs.25,000/- has to be paid. But, in the instant case, only a sum of Rs.13,120/- has been awarded by the Tribunal to the appellant.

d. The accident happened in the year 2006. Therefore, considering the year of the accident, no interest can be paid to the appellant for the enhanced amount. This Court is of the considered

view that a sum of Rs.25,000/- ought to have been awarded by the Tribunal instead of Rs.13,120/-.

8. In the result,

(i) the Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) the compensation awarded by the Tribunal under the impugned award is enhanced to Rs.25,000/- (Rupees twenty five thousand only) from Rs.13,120/- (Rupees thirteen thousand one hundred and twenty one only).

(iii) It is brought to the notice of this Court that the compensation awarded by the Tribunal under the impugned award has already been deposited by the second respondent-Insurance Company. Therefore, the second respondent-insurance company is directed to deposit the enhanced amount of Rs.11,880/- (Rupees

eleven thousand eight hundred and eighty only) to the credit of M.A.C.T.O.P.No.136 of 2007 within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant is permitted to withdraw the enhanced amount lying to the credit of M.A.C.T.O.P.No.136 of 2007 by filing an appropriate application.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

srn

To

1. The Principal District Judge
(Motor Accident Claims Tribunal)
at Perambalur

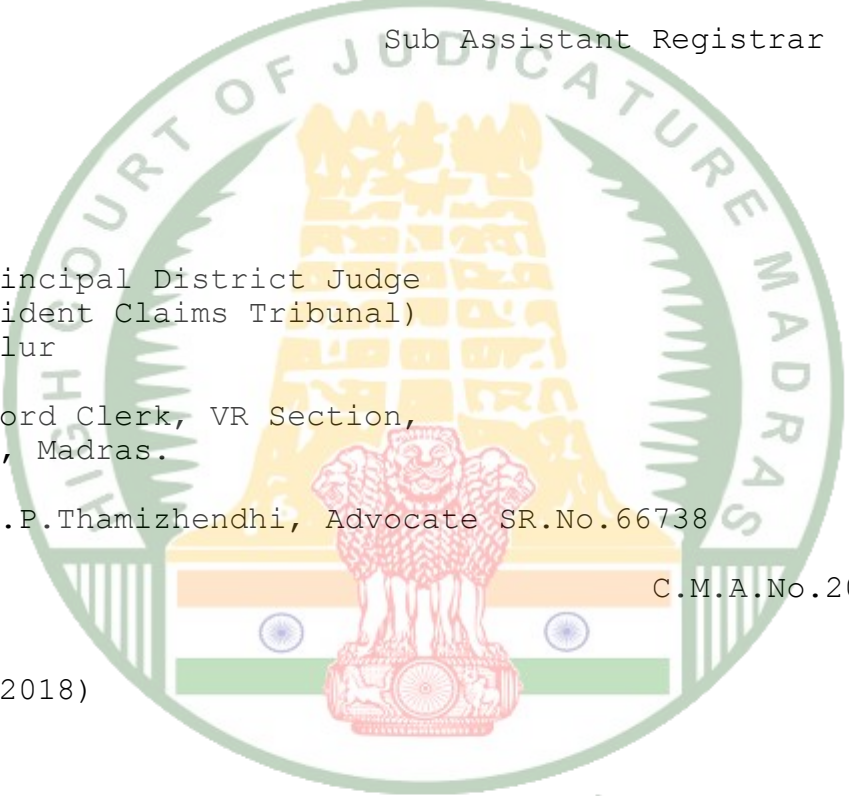
2. The Record Clerk, VR Section,
High Court, Madras.

+1cc to Mr.P.Thamizhendhi, Advocate SR.No.66738

C.M.A.No.2012 of 2009

RJ (CO)

GMV (12/11/2018)



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