

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.224 of 2011

D.Thangamuthu

... Appellant/claimant

Vs.

1. ARC Parcel Service Private Limited,
No.504/2B, New Seerapalayam Village,
Pollachi Main Road, Eachanari,
Coimbatore 641 021
(Remained exparte before trial court)

2. National Insurance Company Limited,
No.751, Anna Salai, 2nd Floor,
Chennai 600 002. Respondents/Respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the quantum of compensation awarded in M.C.O.P.No.2990 of 2006 dated 16.09.2010 on the file of the IV Judge, Motor Vehicle Accidents Claims Tribunal, Court of Small Causes, Chennai.

For Appellant : Mr.N.M.Muthurajan

For 2nd Respondent : Mrs.R.Sreevidhya

First Respondent : Exparte

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.2990 of 2006 on the file of the IV Judge, Motor Vehicle Accidents Claims Tribunal, Court of Small Causes, Chennai.

2. The appellant/claimant has filed a claim petition in MCOP No.2990 of 2006 under Section 166 of the Motor Vehicles Act seeking compensation of Rs.16,00,000/- for the injuries sustained by him in a road accident that took place on 02.06.2006.

3. The brief case of the claimant is as follows. On 02.06.2006, the appellant was riding his cycle on Mount-Poonamallee road. At about 22.00 hours, when he was nearing Manapakkam Junction, a speeding van bearing registration No.TN-37-AC-5644 hit the by-cycle ridden by the claimant, as a result of which, he fell down and sustained grievous injuries. According to him, rash and negligent driving of the driver of the van was the cause of the accident and that since the said van was insured with the 2nd respondent, both of them are jointly and severally liable to pay compensation to him.

4. In the trial court, the first respondent, the owner of the van, remained absent and was set exparte and the 2nd respondent/Insurance company filed a counter affidavit denying all the allegations of the claimant.

5. After analysing the evidence on record, the trial court awarded a compensation of Rs.6,23,000/- together with interest at the rate of 7.5% per annum to the claimant. Not satisfied with the quantum of compensation awarded by the tribunal, the appellant/claimant has filed the present appeal seeking enhancement of compensation amount.

6. Mr.N.M.Muthurajan, learned counsel appearing for the appellant would contend that the appellant's left leg was amputated below knee level, as a result of which, he could not pursue his profession as distributor of water cans to various houses. He would also contend that the compensation awarded by the tribunal is very meagre and that the tribunal while adopting multiplier method, has wrongly adopted multiplier of '13' instead of '14'.

7. Per contra, Mrs.R.Sreevidhya, learned counsel appearing for the 2nd respondent would contend that the tribunal after considering the evidence on record, has awarded the just compensation and therefore, the award passed by the tribunal need not be disturbed.

8. In the instant case, the appellant/claimant was owning a petty shop and was also distributing water cans by cycle to various houses. According to the claimant, he was earning a sum of Rs.2,500/- per month and he was aged 45 years, on the date of the accident. Dr.Mathiazhagan (PW2) has assessed the permanent disability as 50%. When it is contended by the appellant that he was owning a petty shop and was distributing water cans to various houses, the amputation below the knee level in the motor accident had practically disabled him from pursuing his day to day work. The disability arisen out of accident had completely hampered him from carrying his work. Therefore, the multiplier method adopted by the trial

court is perfectly in order, as per the decision of a Division Bench of the Honourable Supreme Court in Rajkumar Vs. Ajay Kumar and another reported in 2011(1)SCC 343. However, the trial court while adopting the multiplier method, had applied multiplier '13'. As per the decision in Sarla Verma and other Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, the proper multiplier applicable in this case is '14', since the appellant was aged 45 years on the date of the accident. Further more, the appellant is entitled to 25% towards future prospects, as per the decision of the Constitution Bench of the Honourable Supreme Court in National Insurance Company Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 601.

9. The tribunal was right in taking up the monthly income of the appellant as Rs.4,500/-. To this amount, 25% has to be added towards future prospects, which comes to Rs.5,625/-. Thus, the partial permanent disability is fixed as $(5625 \times 12 \times 14 \times 50 / 100)$ Rs.4,72,500/-. The trial court under various heads has awarded a compensation of Rs.6,23,000/-, which extracted here under.

S1 No	Heads	Amount in Rs.
1	Transportation expenses	10,000
2	Extra Nourishment	10,000
3	Damage to clothing	1,000
4	Medical Expenses	21,000
5	Attender charges	22,000
6	Expenses for artificial limb	25,000
7	Mental agony due to amputation	75,000
8	Loss of amenities of life	50,000
9	Future transportation expenses	10,000
10	Pain and sufferings	50,000
11	Loss of earning power	3,51,000
	Total	6,23,000

Except the partial permanent disability, which is now enhanced from Rs.3,51,000/- to Rs.4,72,500, the amounts awarded under various heads appear to be very reasonable, in the facts and circumstances of the present case. Apart from the above amount, the appellant is also entitled to Rs.10,000/- towards future

medical expenses. Therefore, the total compensation is revised as Rs.7,54,500. The following is the tabular column which would show the enhanced award under various heads.

Sl No	Heads	Amount in Rs.
1	Transportation expenses	10,000
2	Extra Nourishment	10,000
3	Damage to clothing	1,000
4	Medical Expenses	21,000
5	Attender charges	22,000
6	Expenses for artificial limb	25,000
7	Mental agony due to amputation	75,000
8	Loss of amenities of life	50,000
9	Future transportation expenses	10,000
10	Pain and sufferings	50,000
11	Partial permanent disability	4,72,500
12	Future medical expenses	10,000
	Total	7,54,500

The afore said amount minus Rs.20,000/- (towards "Future medical expenses and "Future Transportation expenses") i.e. Rs.7,34,000/- shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

12. In the result,

(i) The appeal is allowed in part and a sum of Rs.,7,54,500/- is awarded to the appellant/ claimant as compensation together with interest at the rate of 7.5% per annum on Rs.7,34,500/- from the date of filing of the claim petition till the date of deposit. The amount of Rs.20,000/- towards future transportation expenses and future medical expenses shall not carry any interest.

(ii) The 2nd respondent is directed to deposit the said amount along with interest , within a period of four weeks from the date of receipt of a copy of this order.

(ii) On such deposit being made by the 2nd respondent, the petitioner is entitled to withdraw the entire amount

together with interest forthwith, after following the due process of law.

(iii) No order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mst

To

1 . The IV Judge,
Motor Accidents Claims Tribunal,
Court of Small Causes, Chennai.

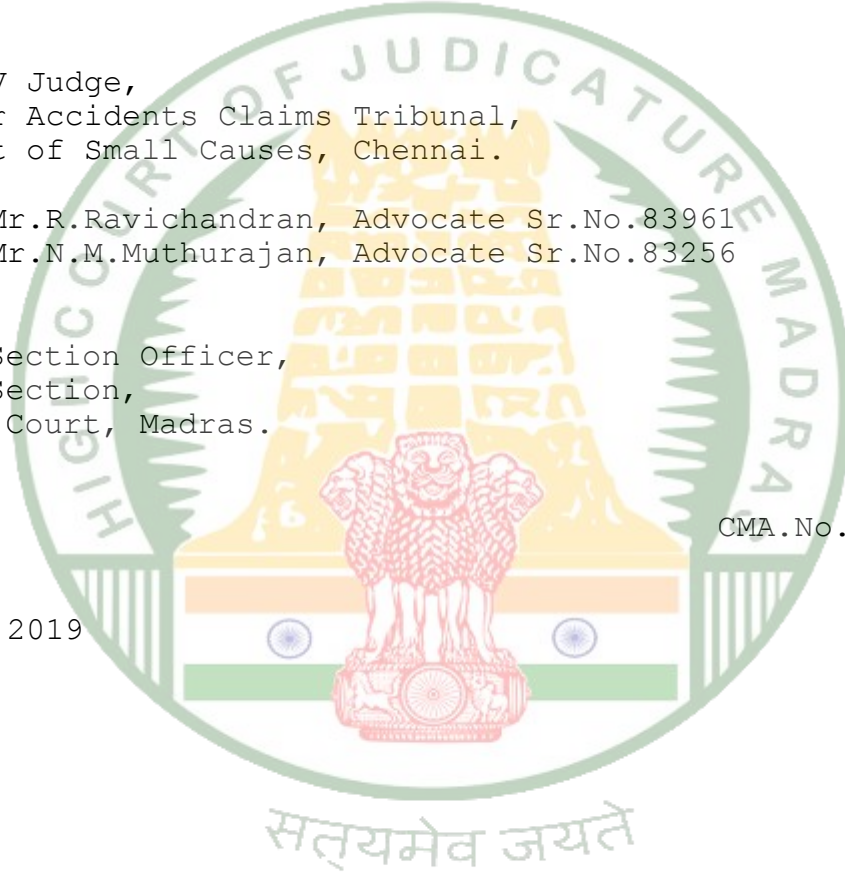
+1 cc to Mr.R.Ravichandran, Advocate Sr.No.83961

+2 cc to Mr.N.M.Muthurajan, Advocate Sr.No.83256

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The Section Officer,
V.R.Section,
High Court, Madras.

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MG(CO)
CSL/09.01.2019



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