

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2018

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1748 of 2018

K.Gowtham ... Appellant/Claimant

-Vs-

1. P.Venkatesan
2. K.R.Mani

3. The Branch Manager
United India Insurance Company Ltd.,
Branch Office, 146W Kumar Complex
Tiruchengode
Namakkal District
(Respondents 1 & 2 remained ex parte
before the Tribunal, hence, notice is
dispensed with) ... Respondents/Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under
Section 173 of the Motor Vehicles Act, 1988 against the Judgment
and decretal order dated 12.1.2012 made in M.C.O.P.No.94 of 2010
on the file of the Motor Accidents Claims Tribunal (Additional
District Judge, Fast Track Court No.IV), Bhavani at Erode
District.

For Appellant :: Mr.Ma.P.Thangavel

For Respondents :: Mr.T.Ravichandran for R3
RR 1 & 2 Expate

JUDGMENT

(Judgment of the Court was made by N.KIRUBAKARAN, J.)

This appeal has been preferred by the claimant aggrieved
over the quantum of compensation of Rs.15,47,553/- awarded by
the Tribunal for the injuries sustained by him in the accident
occurred on 11.3.2008 when he was travelling as a pillion-rider
at about 9.30 PM in a two-wheeler bearing Registration No.TN-38-
Z-6679 from Kalingarayanpalayam to Bhavani on the Erode to

Bhavani Main Road, which was hit by an articulated vehicle bearing Registration No.TN-34-E-3452 belonging to the second respondent and insured with the third respondent.

2. Heard Mr.Ma.P.Thangavel, learned counsel for the appellant and Mr.T.Ravichandran, learned counsel for the third respondent Insurance Company.

3. The only issue to be decided is with regard to the quantum of compensation, as there is no appeal by the Insurance Company questioning the correctness of the finding regarding negligence.

4. It is evident from the records that due to the injuries, the left leg of the appellant below the hip was amputated, as proved by the discharge summaries, Exs.P-8 to P-11, the disability certificate, Ex.P-28 and further fortified by the evidence of the Doctor, P.W.4. Even on the right thigh, tissues were harvested for the purpose of skin grafting, because of which the movement of right leg is also affected. While using the right hand, the claimant also is facing stump pain. The doctor, P.W.4 has deposed that due to the amputation of left leg and restriction in the movement of the right leg, it is impossible for the claimant to do any work. Therefore, 100% physical disability was assessed by the doctor, P.W.4. Based on the above evidence, the Tribunal also determined the disability at 100%, but awarded a sum of Rs.10,56,000/- under the head 'physical disability' by fixing his monthly income at Rs.5,500/-.

5. With the above injuries, it is impossible for the claimant to carry out any avocation, especially when he was working as a Boiler Attender. The claimant proved through Ex.P-24, which is a second class boiler attendant certificate of competency issued under the Indian Boilers Act, 1923 by the Government of Tamil Nadu that he is qualified to work as a Boiler Attender and through Ex.P-25, which is a certificate issued by the employer, he also proved his avocation. However, through Ex.P-25, though the claimant claimed a sum of Rs.9,750/- per month as his income, the Tribunal fixed only Rs.5,500/-, as neither the claimant nor the employer of the claimant produced any service records or the salary register. However, a person who is competent to work as a Boiler Attender in a company would be earning not less than Rs.6,500/- per month. The Hon'ble Supreme Court in Syed Sadiq etc., v. Divisional Manager, United India Insurance Co.Ltd., 2014 (1) TN MAC 459 (SC) determined the monthly income of a vegetable vendor at Rs.6,500/-, who sustained injuries in the accident of the year 2008. In this case also, since the accident occurred in 2008, in consonance with the above judgment, this Court re-determines the monthly

income at Rs.6,500/-. As the injured was aged about 35 years as proved by the certificates, 40% has to be added towards future prospects, as per the judgment of the Apex Court in National Insurance Company Limited v. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). If 40% is added to the said income i.e., Rs.6500+2600, it comes to Rs.9,100/-. The proper multiplier considering the age of the injured is 16. Accordingly, this Court re-determines the compensation under the head 'physical disability' at Rs.17,47,200 i.e., Rs.9100x12x16, instead of Rs.10,56,000/- fixed by the Tribunal, for the 100% physical disability suffered by the claimant. The Tribunal has rightly awarded a sum of Rs.3,21,553/- towards medical expenses and transportation, as per the bills marked from Exs.P-12, P-15 to P-18, P-22, P-27 and P-14, respectively and the same requires no interference.

6. Considering the nature of injuries suffered by the claimant, the Tribunal awarded a sum of Rs.1,50,000/- towards artificial limb, which requires no interference. The amount of Rs.10,000/- awarded towards pain and suffering is enhanced to Rs.1,00,000/-. The amount of Rs.10,000/- awarded towards extra nourishment is enhanced to Rs.25,000/-. Since no amount has been awarded towards loss of amenities, a sum of Rs.1,00,000/- is awarded and a sum of Rs.15,000/- is awarded towards attender charges. Accordingly, the claimant is entitled to a total compensation of Rs.24,58,753/- under the following heads:

Sl. No.	Heads	Amount
1	Towards 100% Physical Disability	Rs.17,47,200/-
2	Towards Medical expenses and transportation	Rs. 3,21,553/-
3	Towards Cost of Artificial Limb	Rs. 1,50,000/-
4	Towards Pain and Suffering	Rs. 1,00,000/-
5	Towards Loss of Amenities	Rs. 1,00,000/-
6	Towards Extra Nourishment	Rs. 25,000/-
7	Towards Attender Charges	Rs. 15,000/-
	Total	Rs.24,58,753/-

The claimant is entitled to interest at the rate of 7.5% per annum for the aforesaid compensation amount from the date of petition till realisation. However, since the appeal has been preferred by the claimant with a delay of 2261 days, the appellant/claimant is not entitled to any interest for the said period alone.

7. The third respondent Insurance Company is directed to

deposit the entire amount of enhanced compensation i.e., Rs.24,58,753/-, after deducting the amount, if any, already deposited, together with interest at the rate of 7.5% per annum, excluding the delay period, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal is directed to transfer the entire compensation awarded including interest to the bank account of the appellant/claimant through RTGS within a week therefrom.

8. The claimant is further directed to pay the additional court fee, if any, within a period of two weeks from the date of receipt of a copy of this order, failing which the enhancement made by this Court shall be automatically deleted. On payment of such additional court fee, the registry is directed to note/make entry about the payment of court fee in the decree itself.

9. With this direction, the civil miscellaneous appeal is allowed in part. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

ss/ay

To

1. The Motor Accidents Claims Tribunal
(Additional District Judge, Fast Track Court No.IV)
Bhavani at Erode District
2. The Section Officer,
VR Section, High Court, Madras.

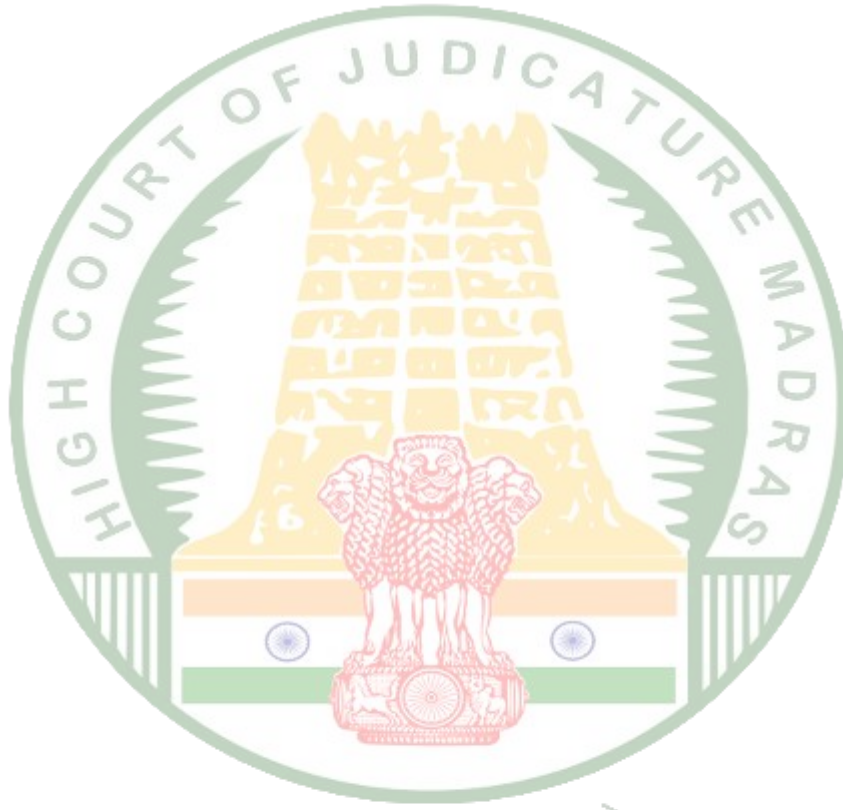
+1cc to Mr.T.Ravichandran, Advocate SR.No.55595

+1cc to Mr.MA.P.Thangavel, Advocate SR.No.55452

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C.M.A.No.1748 of 2018

GMV (10/10/2018)



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