

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 09.11.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.3209 of 2012

B.Niranjankumar ...Petitioner/Appellant/Claimant

Vs.

1. P.Rajesh
2. K.Manivel
3. United India Insurance Company Limited,
E.P.Building, Door No.24, Mill Road,
Coimbatore, 641 104.
4. R.Chezhiyan
5. Vijayakumar
6. United Insurance Company Limited,
Door No.280, Ooty Main Road,
Mettupalayam 641 301. ... Respondents/ Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award passed in M.C.O.P.No.366 of 2000 dated 27.10.2006 by the Motor Accidents Claims Tribunal, Principal Subordinate Court, Coimbatore.

For Appellant : Mr.P.Sesubalan Raja
for N.Damodaran
For Respondents 3 and 6 : Mr.T.Ravichandran
Respondents 1,2,3 & 5 : No appearance

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.366 of 2006 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Coimbatore.

2. The facts of the case of the appellant/claimant are briefly as follows. On 24.08.2005 at about 5.00 hours, the appellant took a taxi bearing registration No. TDV 2500 (Ambassador Car) belonging to the 2nd respondent from Coimbatore Railway Station and he was proceeding towards his house at K.Vadamadurai. When he was travelling on Coimbatore-Mettupalayam road, the first respondent, who is the driver of

the car bearing registration No.TDV 2500 belonging to the 2nd respondent, drove the car in a rash and negligent manner and collided against a bus bearing registration No. TN 40 9966, as a result of which, the appellant/claimant sustained grievous injuries and he was immediately rushed to V.G.Speciality Hospital and Medical Centre, Coimbatore. Since he had sustained fracture on his right leg, an operation was performed on the same day and he was admitted as an inpatient till 02.09.2005. Subsequently, he was admitted in the same hospital on 06.09.2005 and discharged on 07.09.2005. He was thereafter admitted for the third time in the very same hospital on 24.05.2006 and he had undergone a bone grafting. Hence, the appellant/claimant had filed the claim petition before the Motor Accidents Claims Tribunal seeking for a compensation of Rs.5,00,000/-.

3. After analysing the entire evidence on record, the Tribunal awarded compensation of Rs.1,29,710/- together with interest at the rate of 7.5% p.a. The break-up details in M.C.O.P.No.366 of 2006 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Coimbatore are as follows.

Sl.No	Heads	Amounts in Rs.
1	Partial Permanent disability and also for Pain and sufferings	25,000
2	Mental agony	5,000
3	Medical Expenses	98,710
4	Extra Nourishment	500
5	Transportation	500
	Total	1,29,710

4. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellant/ claimant has filed the present appeal for enhancement of the Award amount.

5. Mr.P.Sesubalanraja, learned counsel appearing for the appellant would contend that bone grafting is a surgical procedure that replaces missing bone in order to repair bone fractures that are extremely complex and pose a significant health risk to the patient, or fail to heal properly. His contention is that the Tribunal did not take into account the seriousness of the injury sustained by the appellant/claimant and had awarded only a sum of Rs.25,000/- towards partial permanent disability and for pain and sufferings undergone by the appellant. He also drew the attention of this court to the evidence of Doctor Senthilkumar (PW3), who has deposed that the

bone namely Tibia and Fibula did not join properly and the right leg is slightly lesser 1.00 c.m. than the left leg and therefore, the patient would find it difficult to walk or sit on the floor. He therefore issued a partial permanent disability certificate (Ex.P26) stating that the partial permanent disability of the appellant/claimant is 25%. However, the Tribunal had awarded only a sum of Rs.25,000/- towards pain and sufferings and also for partial permanent disability. According to the learned counsel for the appellant, a very meagre amount under the head transportation is being awarded by the Tribunal. Therefore, he prayed for enhancement of the compensation amount.

6. Per contra, the learned counsel appearing for the 3rd and 6th respondents would contend that the Tribunal had considered all the evidence adduced on the side of the petitioner and had awarded a sum of Rs.1,29,710/-, which according to them is a just compensation.

7. Dr.Senthilkumar (Pw3) is a Government Doctor, working as Assistant Professor in Orthopedic Department in the Medical College Hospital, Coimbatore and is a specialist in Bone fraction Surgery. He has also issued a Disability Certificate (Ex.P26) to the appellant/claimant. During the course of cross examination, nothing has been suggested to him to discredit his evidence. In spite of that, the learned Principal Subordinate Judge, Motor Vehicles Accident Tribunal, Coimbatore, without assigning any reasons, has awarded only a sum of Rs.25,000/- for partial permanent disability and also for pain and sufferings undergone by the appellant/claimant. Therefore, a sum of Rs.75,000/- is awarded under the Head of partial permanent disability and Rs.20,000/- is awarded for pain and sufferings.

8. The appellant's contention is that he was earning a sum of Rs.52,500/- per month. However, no acceptable evidence is adduced in this regard. The Ex.P26 shows that the appellant/claimant was working in Safe Express, Hyderabad. Therefore, his monthly income is fixed at Rs.6,500/- per month. Since the appellant/petitioner had undergone surgery twice, definitely, he would have been bedridden at least for three months. Hence loss of income is calculated for 3 months i.e. $6,500 \times 3 = 19,500/-$ In addition to that considering the injury sustained by the appellant and the period of admission as an patient, a sum of Rs.10,000/- is awarded towards transportation and a sum of Rs.15,000/- is awarded under the Head of Extra Nourishment.

9. Accordingly, the amount of compensation awarded by the Tribunal is enhanced from Rs.1,29,710/- to Rs.2,38,210/-, which is detailed as under

Sl.N o	Heads	Amounts in Rs.
1	Partial Permanent disability	75,000
2	Pain and sufferings and mental agony	20,000
3	Medical Expenses	98,710
5	Extra Nourishment	15,000
6	Transportation	10,000
7	Loss of income (6,500 x 3)	19,500
	Total	2,38,210

Hence, a total sum of Rs.2,38,210/- together with interest at 7.5% p.a. from the date of claim petition till the date of deposit is awarded to the appellant.

10. In the result,

(i) The appeal is allowed in part and sum of Rs.2,38,210/- (Rupees two lakhs thirty eight thousand two hundred and ten only) is awarded to the appellant/ claimant as compensation together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit. The ***3rd** respondent is directed to deposit the award amount along with interest to the credit of M.C.O.P.No.366 of 2006 on the file of the Motor Vehicle Accidents Claims Tribunal, Principal Subordinate Court, Coimbatore, 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 ***3rd** respondent, the petitioner is entitled to withdraw the entire amount together with interest, forthwith.

सत्यमेव जयते
Sd/-

Assistant Registrar (Co)
Dated:03/01/2019

*Corrected as per order of
this Court dated 30.01.2019

Sd/-

Assistant Registrar (CO)
Dated:18/02/2019

//True Copy//

Sub Assistant Registrar

mst
To

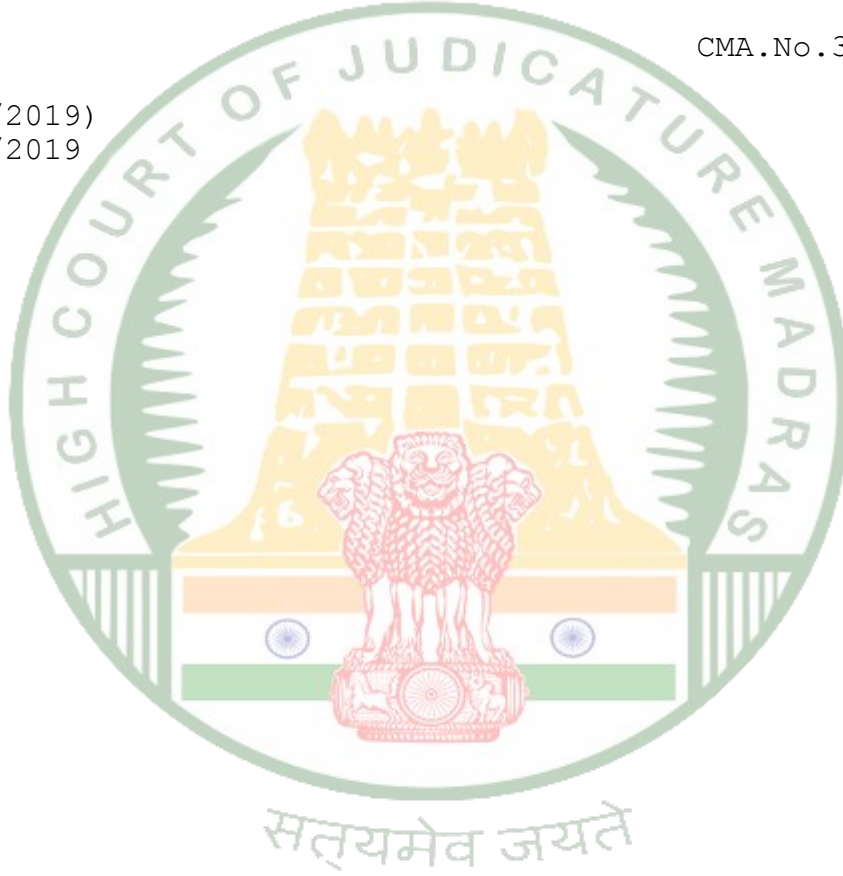
1 . The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Coimbatore

To be substituted to the
order already despatched
on 29/01/2019

+1cc to Mr.T.Ravichandran, Advocate SR.No. 76955
+1cc to Mr.P.Sesubalan Raja , Advocate SR.No. 76991
***+1cc to Mr.P.Sesubalan Raja, Advocate Sr.7658**

CMA.No.3209 of 2012

ASK(07/01/2019)
srg 20/02/2019



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