

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1274 of 2008

P.Patrick

.. Appellant

..Vs..

1.T.M.Krishnamurthy

2.The United India Insurance Co. Ltd.,
38, Anna Salai,
Chennai - 600 002.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 16.11.2007 in MCOP.No.935 of 2002 on the file of the Motor Accidents Claims Tribunal (IV Judge, Court of Small Causes) at Chennai.

For Appellant : Mr.A.N.Viswanatha Rao
For Respondent 2 : Mr.D.Bhaskaran

J U D G M E N T

The instant appeal has been filed by the claimant seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal (IV Judge, Court of Small Causes, Chennai) by its Award dated 16.11.2007 in M.C.O.P.No.935 of 2002.

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 04.02.2001, caused by an auto bearing registration No.TN07-Y-8868 owned by the first respondent and insured with the second respondent. The Appellant preferred a compensation claim before the Motor Accident Claims Tribunal in M.C.O.P.No.935 of 2002 seeking a compensation of Rs.6,00,000/-. The Motor Accident Claims Tribunal by its award dated 16.11.2007 in M.C.O.P.No.935 of 2002 directed the second respondent to pay the Appellant a sum of Rs.95,055/-, after deducting 50% towards contributory negligence on the part of the Appellant out of the total Award amount of Rs.1,90,110/-

together with interest at the rate of 7.5% per annum from the date of claim till the date of realization and also awarded costs.

3. Aggrieved by the Award dated 16.11.2007 in M.C.O.P.No.935 of 2002, the instant appeal has been filed by the claimant seeking enhancement of compensation.

4. Heard Mr.A.N.Viswanatha Rao learned counsel for the appellant and Mr.D.Bhaskaran, learned counsel for the second respondent/insurance company.

5. According to the learned counsel for the appellant, the Tribunal has awarded a meagre compensation and not commensurate with the actual loss sustained by the Appellant as a result of the accident caused by a vehicle insured with the second respondent insurance company. According to the learned counsel for the Appellant, the Appellant sustained two fractures namely fracture of right tibia and fibula and closed reduction of ring fixator had to be externally applied on the Appellant due to the injuries sustained by him, as the result of the accident.

6. According to the learned counsel for the Appellant, the Appellant was a machine operator with Ashok Leyland and was aged 42 years at the time of the accident and was earning a monthly income of Rs.11,790/- as per the pay slip which was marked as Ex.P4 before the Tribunal. According to the learned counsel for the Appellant, considering the grievous injuries sustained by the Appellant, the Tribunal ought to have awarded higher compensation to the Appellant.

7. The learned counsel for the Appellant further contended that adequate compensation was not granted towards transportation cost, extra nourishment charges, pain and suffering and disability. Further, the learned counsel for the Appellant contended that the Tribunal has not awarded any compensation towards attender charges and loss of amenities.

8. Per contra learned counsel for the second respondent would submit that the compensation awarded by the Tribunal to the Appellant is a just compensation.

9. 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 nature of injuries sustained by the Appellant as a result of an accident caused by a vehicle insured with the second respondent has not been disputed by the second respondent

before the Tribunal. The Appellant has sustained two fractures namely fracture of L/3 right tibia and fibula and closed reduction and ring fixator has also been applied on the Appellant due to the injuries sustained by him.

b) At the time of accident, the Appellant was 42 years and was employed as a machine operator with Ashok Leyland. The Appellant has also produced his pay slip before the Tribunal, which was marked as Ex.P4 which discloses that he was earning a monthly salary of Rs.11,790/- at the time of the accident.

c) The Tribunal has also deducted 50% compensation out of total compensation amount payable to the Appellant towards his contributory negligence and after reduction, only a sum of Rs.95,055/- has been awarded to the Appellant under the impugned Award.

d) As rightly pointed out by the learned counsel for the Appellant, considering the nature of injuries sustained by the Appellant, the Tribunal has not awarded adequate compensation towards transportation costs, extra nourishment charges, pain and suffering and permanent disability compensation.

e) Even though the Tribunal has assessed the disability of the Appellant at 40% based on the disability certificate produced by the Appellant before the Tribunal which was marked as Ex.P7, considering the gravity of injuries, the Tribunal ought to have awarded higher compensation to the Appellant towards his disability and in the considered view of this Court, a sum of Rs.80,000/- instead of Rs.40,000/- will be an adequate compensation towards disability suffered by the Appellant.

f) As rightly contended by the learned counsel for the Appellant, the Tribunal has also not awarded any compensation towards attender charges and loss of amenities. Considering the gravity of injuries sustained by the Appellant, the Tribunal ought to have awarded some amount of compensation towards attender charges and loss of amenities to the Appellant.

10. In the light of the above observations, this Court is of the considered view that the award passed by the Tribunal has to be enhanced in the following manner:

Heads	Amount Awarded by the Tribunal	Modified Amount
Loss of income	Rs.1,06,109.91/-	Rs.1,06,110/-
Transport Expenses	Rs. 3,000/-	Rs.10,000/-
Extra Nourishment	Rs.1,000/-	Rs.10,000/-
Medical Expenses	Rs.30,000/-	Rs.30,000/-
Mental Agony	Rs.5,000/-	Rs.5,000/-
Attender Charges	Nil	Rs.10,000/-
Pain and Suffering	Rs.5,000/-	Rs.20,000/-

Heads	Amount Awarded by the Tribunal	Modified Amount
Permanent Disability	Rs.40,000/-	Rs.80,000/-
Loss of Amenities	Nil	Rs.20,000/-
Total	Rs.1,90,109.91	Rs.2,91,110/-
Less: 50% contributory negligence	(-) Rs.95,055/-	(-) Rs.1,45,555/-
Award Amount	Rs.95,055/-	Rs.1,45,555/-

10. In the result, the award passed by the Tribunal is modified by enhancing the Award amount from Rs.95,055/- to Rs.1,45,555/- and the second respondent is directed to pay the Appellant a sum of Rs.1,45,555/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit, after deducting the amount that has already been deposited, to the credit of MCOP.No.935 of 2002 on the file of the Motor Accident Claims Tribunal (IV Judge, Court of Small Causes) at Chennai, within a period of four weeks from the date of receipt of a copy of the order. On such deposit being made, the Appellant is permitted to withdraw the amount lying to the credit of MCOP.No.935 of 2002 on the file of the Motor Accident Claims Tribunal (IV Judge, Court of Small Causes) at Chennai, along with accrued interest by filing an appropriate application.

11. Accordingly, the Civil Miscellaneous Appeal is partly allowed without costs.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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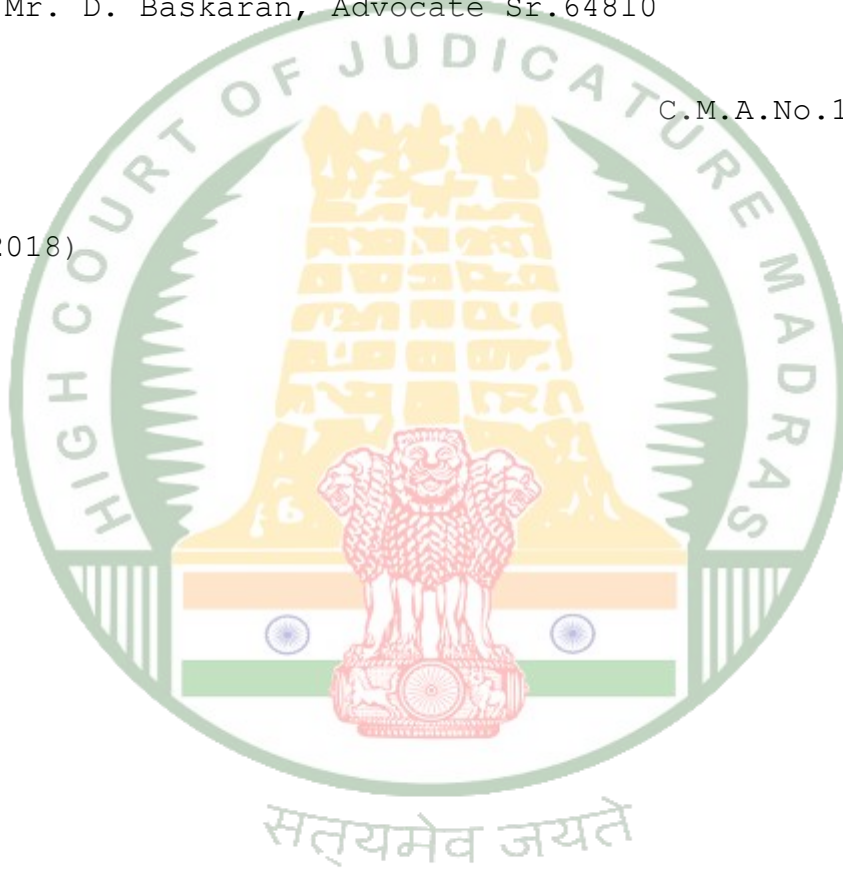
1. The Motor Accidents Claims Tribunal,
IV Judge (Court of Small Causes), Chennai.

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

+ 1 cc to Mr. D. Baskaran, Advocate Sr.64810

C.M.A.No.1274 of 2008

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