

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2543 of 2010

A.Palanisamy

.. Appellant

Vs

1.R.Karthickumar

2.S.Gandhimathi

3.The Branch Manager,
National Insurance Company Co Ltd.,
Divisional Office II,
16-State Bank Road,
Coimbatore - 641 018.

...

Respondents

(The respondents 1 & 2 are not necessary party to this appeal,
hence the 1 & 2 respondents are given up)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 14.09.2009 in M.C.O.P.No.26/2007 passed by the Motor Accident Claims Tribunal (1st Additional Sub Judge) Erode.

For Appellant : Ms.N.Premalatha
for Mr.R.Nalliyappan
For Respondents : R1 & R2 - Given up
:Mr.T.Ravichandran for R3

J U D G M E N T

The instant appeal has been filed by the claimant seeking enhancement of compensation under the impugned Award dated 14.09.2009, passed by the Motor Accident Claims Tribunal (1st Additional Sub Judge, Erode) in M.C.O.P No.26 of 2007.

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

(i)The Appellant sustained injuries on 02.06.2006 as a result of an accident caused by a Mini Dor Van bearing Registration No.TN.38 AE 6015 owned by the second respondent and insured with the third respondent.

(ii)The Appellant preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.26 of 2007, seeking a compensation of Rs.4,76,000/- which was restricted to Rs.2,00,000/-.

(iii)The Motor Accident Claims Tribunal by its Award dated 14.09.2009 passed in M.C.O.P.No.26 of 2007, directed the third respondent to pay the Appellant a sum of Rs.45,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization.

3.Aggrieved by the Award dated 14.09.2009, passed by the Motor Accident Claims Tribunal in M.C.O.P.No.26 of 2007, the instant appeal has been filed.

4.Heard, Ms.N.Premalatha, learned Counsel for the Appellant and Mr.T.Ravichandran, learned Counsel for the third respondent.

5.According to the learned Counsel for the Appellant, the quantum of compensation awarded by the Tribunal under the impugned Award is not commensurate with the actual loss suffered by the Appellant due to the injuries sustained by him as a result of the accident.

6.The learned Counsel for the Appellant submitted that even though, the Appellant had produced the disability certificate which confirms that the Appellant sustained 18% disability as a result of the accident, the Tribunal without any basis has assessed the disability at 6%. Further, the learned Counsel for the Appellant contended that the Appellant's monthly salary was Rs.8,000/- at the time of the accident, whereas without considering the monthly salary earned by the Appellant at the time of the accident, the Tribunal has erroneously assessed it at a lesser sum.

7.Per contra, the learned Counsel for the third respondent Insurance Company would submit that the compensation awarded by the Tribunal is a just compensation since no fracture has been sustained by the Appellant and no document has been produced by the Appellant before the Tribunal to prove that the Appellant was earning a monthly income of Rs.8,000/-.

8.This Court after having considered the materials available on record and after examining the impugned Award

and after hearing the submissions of the respective learned Counsels observes the following:

(a) It is an undisputed fact that the Appellant sustained injuries as a result of an accident caused by a vehicle insured with the third respondent.

(b) The Appellant has filed the disability certificate which was marked as Ex.P-12 before the Tribunal which discloses that the Appellant has suffered 18% disability as a result of the accident.

(c) No contra evidence has been produced by the third respondent Insurance Company before the Tribunal to disprove the percentage of disability suffered by the Appellant.

(d) The Appellant had also filed 14 documents before the Tribunal which was marked as Exs.P-1 to P-14, which included the medical bills, wound certificate and disability certificate. The Appellant had also examined himself as well as the Doctor as a witness before the Tribunal, whereas on the side of the third respondent, no documents were filed and no oral evidence was let in.

(e) There is a clear finding given by the Tribunal that only due to the rash and negligent driving by the driver of the vehicle insured with the third respondent, the accident has happened.

(f) The Tribunal has assessed the disability at 6% whereas the Appellant has produced the disability certificate disclosing that he has suffered 18% disability which has not been disproved by the third respondent.

9. This Court is of the considered view that, the Tribunal has erroneously without any basis has assessed the disability of the Appellant at 6% whereas the actual disability suffered by him was 18%. Therefore, on this ground, a higher compensation will have to be awarded to the Appellant. In the considered view of this Court for 18% disability, the adequate compensation payable to the Appellant is Rs.36,000/- calculated at the rate of Rs.2,000/- per percentage of disability whereas under the impugned Award, the disability compensation was assessed at Rs.15,000/-. Excepting for enhancement of Rs.21,000/- towards disability compensation, the compensation awarded by the Tribunal under the impugned Award towards other heads is not disturbed by this Court.

10. In the result, the appeal is partly allowed and the Award dated 14.09.2009 passed in MCOP No.26 of 2007 is enhanced to Rs.66,000/- instead of Rs.45,000/- together with interest at 7.5% per annum from the date of claim till date of deposit. The third respondent is directed to deposit Rs.66,000/- together with interest at 7.5% per annum from the date of claim till date of deposit.

after deducting the amount already deposited, if any, to the credit of the Motor Accident Claims Tribunal (1st Additional Sub Judge) Erode 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 said sum by filing an appropriate application. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

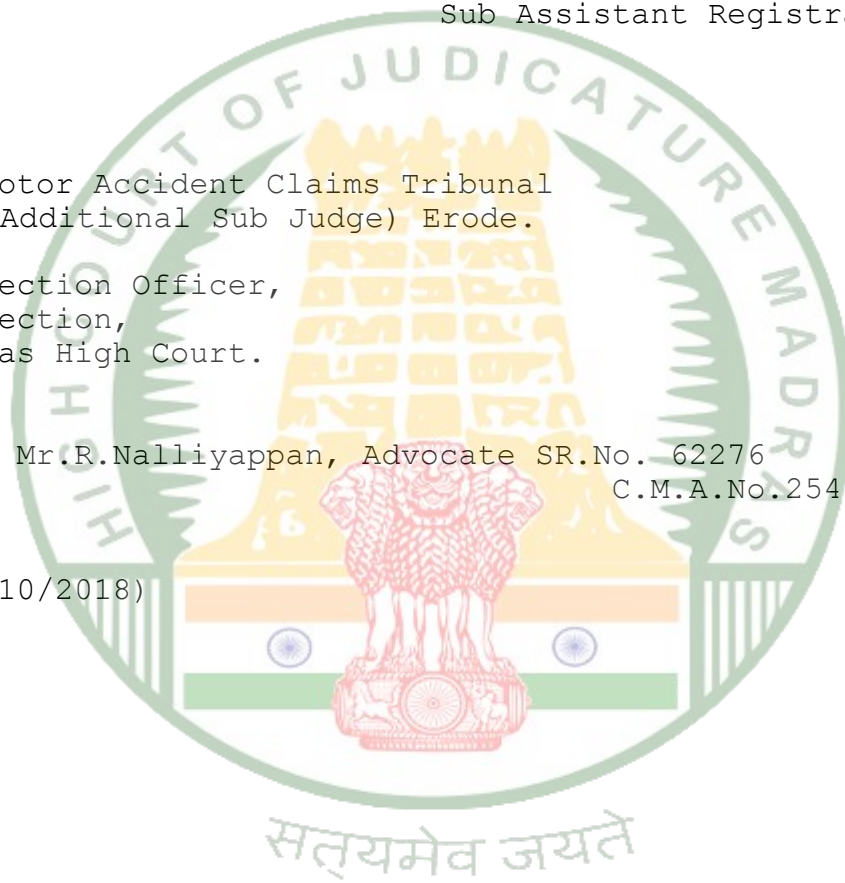
1.The Motor Accident Claims Tribunal
(1st Additional Sub Judge) Erode.

2.The Section Officer,
VR Section,
Madras High Court.

+1cc to Mr.R.Nalliyappan, Advocate SR.No. 62276

C.M.A.No.2543 of 2010

ASK(16/10/2018)



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