

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 31.01.2018

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THE HON'BLE MR.JUSTICE R.SUBBIAH
and

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

C.M.A.No.2678 of 2013

and

C.M.P.No.1408 of 2018

C.Ramani Appellant/Petitioner

Vs.

1.P.Madeswaran

2.M/s.Reliance General Insurance Company Limited,
having branch office at
Shri Lakshmi Complex, 1st Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem-636 004. Respondents/Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award dated 22.02.2013 made in M.C.O.P.No.258 of 2010 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Salem and praying enhancement.

For Appellant :Mr.G.Arul Murugan

For Respondents : Mr.S.Arun Kumar (For R2)

JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.,)

Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Salem, in and by award dated 22.02.2013 in M.C.O.P.No.258 of 2010, the claimant has come forward with the present appeal.

2.Since the present appeal has been filed only questioning the quantum of compensation, it is not necessary for this Court to traverse into the other aspects of the award passed by the Tribunal.

3.The case of the claimant before the Tribunal is that he was a driver by avocation. On 18.03.2010 he met with a road accident involving Taurus Lorry bearing Reg.No.TN-28-L-9645, owned by the 1st respondent and insured with the 2nd respondent-Insurance Company. He was taken to Kurinji Hospital at Salem, wherein he was admitted and had taken treatment for two days. On examination, it was found that he had sustained multiple fracture and crush injury on his left leg. Thereafter, he was

taken to Ganga Hospital at Coimbatore. On 19.03.2010, he underwent a surgery and his left leg above the knee was amputated. He was taking treatment as inpatient from 19.03.2010 to 03.04.2010 initially and thereafter, he was taking treatment as outpatient upto 19.08.2010. Hence, he made a claim for a sum of Rs.25 lakhs as compensation as against the respondents before the Tribunal.

4.In order to prove the income earned by the claimant before the Tribunal, on the side of the claimant, he examined himself as P.W.1 besides examining four other witnesses as P.W.2 to P.W.5 and marked 23 documents as Ex.P.1 to Ex.P.23. On the side of the respondents, neither oral nor documentary evidence was adduced.

5.The Tribunal, after analysing the entire evidence, has passed an award for a total sum of Rs.9,32,530/- as compensation. Not being satisfied with the same, the claimant has filed the present appeal.

6.Today, when the matter is taken up, the learned counsel for the appellant/claimant submitted that the appellant is a driver by avocation and that on account of the accident, his left leg above the knee was amputated. The Doctor has assessed the disability suffered by the claimant at 80%. But, the Tribunal had taken only a sum of Rs.4,000/- as monthly income and thereafter, by applying multiplier 17, has awarded only a sum of Rs.6,52,800/- in proportion to 80% disability. In this regard, the learned counsel for the appellant submitted that the victim was a driver by avocation and on account of the amputation of right leg above the knee, he cannot continue his avocation. Under such circumstances, the Tribunal by fixing the disability at 100%, by taking minimum sum of Rs.10,000/- as monthly income, ought to have awarded the compensation under the head of loss of income.

7.That apart, the learned counsel for the appellant/claimant has also submitted that the Tribunal has awarded a sum of Rs.50,000/- towards the expenditure for fixing Modular Transfemoral Prosthesis. But, according to the claimant, he had incurred Rs.3,17,500/- to fix Modular Transfemoral Prosthesis. In this regard, the learned counsel for the appellant/claimant has also filed an application in C.M.P.No.1408 of 2018 seeking to receive the bill/receipt issued by the Hospital for fixing the Modual Transfemoral Prosthesis as Ex.P.24.

8.Further, the learned counsel for the appellant/claimant has also submitted that the compensation amounts awarded by the Tribunal under other heads also on the lower side, hence, the same needs suitable enhancement.

9.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company has made his submissions supporting the award passed by the Tribunal.

10. Keeping the submissions made on either side, We have carefully gone through the entire materials available on record. We find that as contended by the learned counsel for the appellant/claimant, while calculating the compensation under the head of loss of earnings, the Tribunal has taken only a meagre sum of Rs.4,000/- as monthly income of the claimant, which has resulted in awarding an inadequate compensation under the said head. Considering the fact that on account of the accident, the claimant's left leg above the knee was amputated and he cannot carry on his avocation, who is a driver by profession, We are of the opinion that by fixing the disability at 100% and taking a sum of Rs.6,500/- as monthly income of the claimant, the calculation could be made to arrive at a just and proper compensation. If the sum of Rs.6,500/- is fixed as monthly income of the claimant and then 40% amount is added towards future prospects, the total amount works out to Rs.9,100/- (6,500 + 2,600). Since the claimant was aged 25 years at the time of accident, the correct multiplier that has to be applied in this case is 18. If the multiplier 18 is applied, then the total works out to Rs.19,65,600/- (9,100 x 12 x 18), which could be the just and reasonable compensation for loss of earning power. Hence, the sum of Rs.6,52,000/- awarded by the Tribunal under the head of loss of earning power is hereby enhanced to Rs.19,65,600/-.

11. Considering the long duration of treatment undergone by the claimant, the sum of Rs.30,000/- awarded by the Tribunal for the pain and sufferings, appears to be on the lower side. Hence, the same is hereby enhanced to Rs.75,000/-. Further, the Tribunal has not awarded any amount for permanent disability. Hence, a sum of Rs.1 lakh is hereby awarded for permanent disability. The evidence on record would show that the claimant would incur expenses for future treatment, therefore, a sum of Rs.2 lakhs is hereby awarded under the head of future medical treatment.

12. Further, it is seen that the Tribunal has not awarded any amount for loss of amenities. Considering the fact that due to the disability suffered by the claimant, he would find it difficult to carry on his normal avocation as he was doing before the accident. Hence a sum of Rs.50,000/- is hereby awarded for loss of amenities. Further, the Tribunal has also not awarded any amount for attender charges. Hence, a sum of Rs.15,000/- is hereby awarded for attender expenses.

13. The appellant/claimant has filed C.M.P.No.1408 of 2018 seeking to receive the bill/receipt issued by the Hospital for fixing the Modular Transfemoral Prosthesis as Ex.P.24. The said CMP is hereby allowed and the bill/receipt are received as Ex.P.24. From the bill/receipt it is seen that the claimant has incurred Rs.3,17,500/- to fix Modular Transfemoral Prosthesis. But, the Tribunal has awarded only a sum of Rs.50,000/- for fixing Prosthesis, which is not correct. We are of the opinion that the claimant is entitled for compensation in respect of the said medical expenses also. Hence, the sum of Rs.3,17,500/- is hereby awarded under the head of medical

expenses for fixing Modular Transfemoral Prosthesis. It is made clear that the claimant is entitled to interest for the amount of Rs.3,17,500/- awarded for fixing Prosthesis from the date of the bill ie., from September, 2013. Similarly, the claimant is not entitled for the interest for the amount of Rs.2 lakhs awarded for future medical expenses. The Tribunal has awarded a sum of Rs.19,875/- for transportation, a sum of Rs.13,000/- for extra-nourishment and a sum of Rs.1,66,855/- for medical expenses, which is supported by medical bills, are hereby confirmed as the same appear to be very reasonable. Consequently, the total compensation amount of Rs.9,32,530/- awarded by the Tribunal is hereby modified and enhanced to Rs.29,22,830/-. The break up details of the modified/enhanced compensation amount are as follows-

Loss of earnings	= Rs.19,65,600/-
Transportation	= Rs. 19,875/-
Extra-nourishment	= Rs. 13,000/-
Medical expenses	= Rs. 1,66,855/-
Pain & Sufferings	= Rs. 75,000/-
Permanent Disability	= Rs. 1,00,000/-
Medical expenses for fixing Prosthesis	= Rs. 3,17,500/-
For Future Treatment	= Rs. 2,00,000/-
Loss of amenities	= Rs. 50,000/-
Attender charges	= Rs. 15,000/-
Total	= Rs.29,22,830/-

14. In the result, the Civil Miscellaneous Appeal is partly allowed and the total compensation amount of Rs.9,32,530/- awarded by the Tribunal is hereby modified and enhanced to Rs.29,22,830/-. The Insurance Company is directed to deposit the entire compensation amount with interest at the rate 7.5 % per annum from the date of claim petition till the date of deposit, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. As stated supra, it is made clear that the claimant is entitled to interest for the amount of Rs.3,17,500/- awarded for fixing Prosthesis, only from the date of the bill ie., from September, 2013. Similarly, the claimant is not entitled for the interest for the amount of Rs.2 lakhs awarded for future medical expenses. On such deposit being made by the Insurance Company, the claimant is entitled to withdraw the same with accrued interest thereon by making necessary application before the Tribunal. The appellant is directed to pay additional court fee for enhanced compensation amount. Connected C.M.P.No.1408 of 2018 is allowed. No costs.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

SSV

To,
The Motor Accident Claims Tribunal
(Chief Judicial Magistrate), Salem.

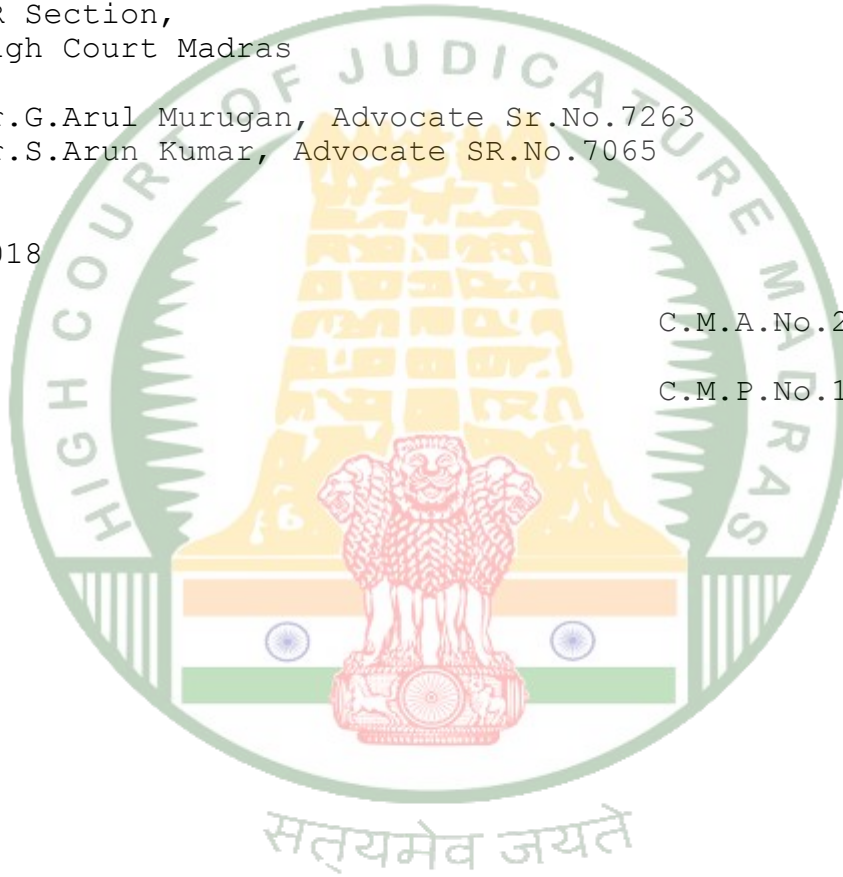
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+1cc to Mr.G.Arul Murugan, Advocate Sr.No.7263
+1cc to Mr.S.Arun Kumar, Advocate SR.No.7065

PA(CO)
EU:22.6.2018

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