

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.465 OF 2008

The Divisional Manager
The Oriental Insurance Company Co.Ltd.
No.6, Divisional Office
Srinivasa Mansion
364/1, 10-B, Main 3rd Block
Jaya Nagar, Bangalore-11 ... Appellant

Vs

1. K.Rajappa
2. G.Bhujendra ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgement passed by the Dharmapuri District Motor Accident Claims Tribunal (Chief Judicial Magistrate No.2) at Krishnagiri in M.C.O.P.No.507 of 2006 dated 6.12.2006.

For Petitioner : Mr. M.Rajasekhar
For Respondent 1 : Mr.V.Thiyagarajan

for M.Sriram

For Respondent 2 : No appearance

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JUDGEMENT

This instant appeal has been filed by the Insurance company challenging the quantum of compensation fixed by the tribunal by its Judgement and Decree dated 06.12.2006 made in M.C.O.P.No.507 of 2006.

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

2. The first respondent who is a Chartered Accountant, suffered injuries, on account of an accident that took place on 18.09.2003, while travelling in a Tempo traveller bearing Registration No.KA05-D-5132 belonging to the second respondent. The first respondent had made a claim of Rs.15,35,000/- which was restricted to Rs.7,00,000/- from the appellant before the Motor Accident Claims Tribunal. The Tribunal by its Judgement and decree dated 06.12.2006 awarded a sum of Rs.4,51,600/- as compensation in favour of the first respondent.

3. Aggrieved by the compensation awarded to the first respondent, the appellant/Insurance Company has preferred the instant appeal.

4. Heard, Mr.M.Rajasekhar, learned Counsel for the appellant and Mr.V.Thiyagarajan, learned counsel for Mr.M.Sriram, learned Counsel for the first respondent.

5. According to the learned counsel for the appellant, the primary ground for challenge in the instant appeal is that the Tribunal has erred in applying 8 Multiplier while awarding a sum of Rs.4,10,400/- towards loss of earning capacity. According to learned counsel for the appellant, for a case where the disability is only 50 percent, multiplier formula cannot be applied. The learned counsel for the appellant further submitted that in respect of other heads awarded by the Tribunal, the appellant does not have any serious objections.

6. Per contra, the learned counsel for the first respondent submits that the first respondent is a qualified Chartered Accountant, having suffered 50 percent disability, the compensation awarded by the Tribunal is a reasonable compensation.

7. This court has perused and examined the Judgement and decree dated 06.12.2006 which is under challenge and has also examined the reasons given by the Tribunal for awarding the compensation in favour of the first respondent and observes the following:

a. As seen from the impugned award, 9 documents were marked as exhibits which included wound certificate, Insurance Policy, discharge summary, medical certificate, income certificate, and disability certificate and two witnesses were examined on the side of the first respondent. On the other hand, no exhibits

were marked on the side of the appellant nor any witness was examined on their side.

b. Insofar as the percentage of disability is concerned, the appellant has not raised any dispute about the same. Their main contention is that multiplier formula cannot be applied for a 50 percent disability. The other documents filed by the first respondent before the Tribunal and marked as exhibits are also not disputed by the appellant. The profession of the first respondent as a chartered accountant is also not disputed by producing any contra evidence.

c. As seen from the impugned award, each and every document filed by the first respondent in support of his claim has been duly considered by the Tribunal and only thereafter, the Tribunal has passed an award for a sum of Rs.4,51,600/- in favour of the first respondent, even though the first respondent had made a claim for Rupees 15,35,000 which was restricted to Rs.7,00,000/-.

d. Insofar as the applicability of multiplier method for a 50 percent disability is concerned, the first respondent was a chartered accountant and he has produced proof to establish that he was earning a monthly income of Rs.9,500/-. Whether multiplier method is applicable or not is immaterial for the facts and circumstances of the instance case, since the award of compensation in favour of the first respondent is only for Rs.4,51,600/-, even though the first respondent is a chartered accountant and earning a monthly salary of Rs.9,500/- and the percentage of disability is 50 percentage.

e. As a chartered accountant, during the course of his duty, he have to move from place to place including meeting his clients as well as going to the income tax offices.

8. Considering all the above mentioned factors, this Court is of the considered view that the award passed by the Tribunal in favour of the first respondent is a reasonable and valid one. Accordingly there is no merit in the instant appeal. In the result, the appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

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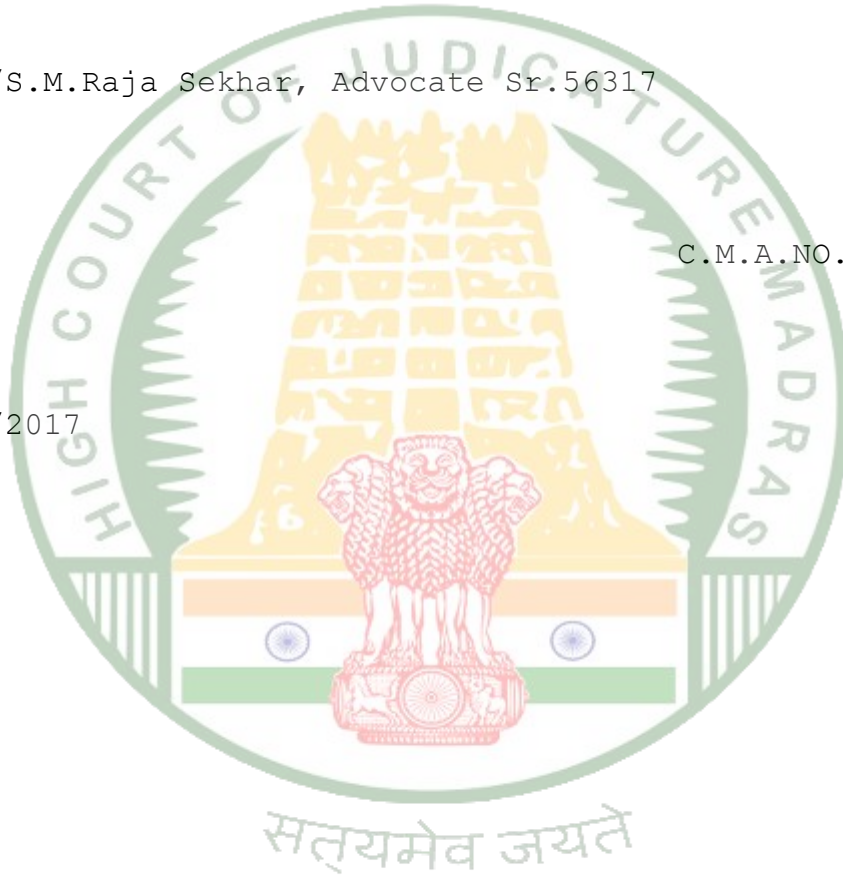
1.The Chief Judicial Magistrate-2,
Motor Accident Claims Tribunal,
Krishnagiri.

2.The Section Officer,
VR Section,
High Court, Madras-104.

+1cc to M/S.M.Raja Sekhar, Advocate Sr.56317

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