

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2019

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

C.M.A.No.1105 of 2006
and
C.M.P.No.8643 of 2017

P.Jeeva ... Appellant/Petitioner
Vs.

1.E.Devaraj

2.The New India Assurance Co. Ltd.,
No.46, Moore Street,
Chennai - 600 001. ... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the amount awarded vide judgment and decree dated 07.03.2005 in M.C.O.P.No.1455 of 2001 on the file of the V Judge, Motor Accident Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mr.A.Shanmugaraj
For R1 : No appearance
For R2 : Mr.J.Chandran

J U D G M E N T

The appellant/claimant has filed this appeal as against the judgment and decree dated 07.03.2005 passed by the V Judge, Motor Accident Claims Tribunal (Court of Small Causes), Chennai, in M.C.O.P.No.1455 of 2001.

2.Brief facts, which are imperative for appreciating the case of the appellant/claimant, are stated hereunder:

On 20.09.2000, about 08.30 p.m., while the appellant was standing in Old Mahabalipuram Road, a Van bearing Registration No.TN-23-W-0479, came in a rash and negligent manner and dashed against him. Due to the said impact, he sustained grievous injuries and fracture. He was taken to the Government Hospital at Royapettah and was then referred to the Government General Hospital, Chennai, where, he underwent treatment and surgeries. Later, he filed a claim petition claiming a total compensation of Rs.1,50,000/- before the Tribunal, which after trial,

awarded a total compensation of Rs.92,500/- with interest @ 9% p.a. from the date of claim petition. Feeling aggrieved and dissatisfied with the quantum of compensation so awarded, the appellant/claimant has approached this Court with this appeal seeking enhancement.

3.The learned counsel for the appellant submitted that as a result of the accident, the appellant has sustained multiple fracture and permanent disability at 75% and has been suffering from untold hardship and mental agony. The learned counsel, placing reliance on the decision in Managing Director, Thiruvallur Transport Corporation v. Thangavelu and another [1996 ACJ 143], further submitted that the Tribunal erred in merging two separate claims, viz., 'permanent disability' and 'loss of earning power' and awarded a lesser sum of Rs.65,000/-, which needs interference by this Court. The learned counsel also submitted that considering the nature of the injuries/fracture sustained by the appellant/claimant, the Tribunal ought to have awarded the entire claim made by him.

4.Per contra, the learned counsel appearing for the 2nd respondent Insurance Company submitted that the impugned judgment has to be confirmed, as the Tribunal has analysed all the aspects in detail and awarded a just compensation.

5.This Court gave its anxious consideration to the rival submissions and perused the materials available on record.

6.The appellant (P.W.1) has stated in his deposition that he was earning a sum of Rs.2,500/- per month as Security Guard, but no document was produced to substantiate the same. Dr.JRR.Thyagarajan (P.W.2), in his evidence, has stated that the appellant's left thigh bones had mal-united and his knee bone appeared to be displaced, by virtue of which, it would be difficult for him to sleep on his left-side and work with his left hand and he has been suffering from permanent disability at 35%. P.W.2 has further deposed that the length of left leg of the appellant was reduced by 2 inches; rods were found to be inserted; the appellant is walking with a stick, for which, the degree of disability was assessed at 40%, thus, in total, the appellant sustained permanent disability at 75%. Ex.P4 is the disability certificate issued by P.W.2. However, the Tribunal has taken the disability at 65% and awarded Rs.65,000/- under the heads "disability" and "loss of earning power", which, in the opinion of this Court, is unfair, unjust and not sustainable in law, as these two heads are distinctive and separate heads, as held by the Supreme Court in Managing Director, Thiruvallur Transport Corporation v. Thangavelu and another [1996 ACJ 143], wherein, at para 6, it was held as follows:

'6. There is no merit in the contention of the appellant that compensation cannot be awarded for permanent disability if compensation is awarded under the heading 'loss of earning power'. They are two distinctive and separate claims. The latter is based on the loss of earning power caused by the disability. Loss of earning power is only one of the consequences of permanent disability. But, the former relates to the other consequences of permanent disability excluding loss of earning power. It is well known that permanent disability will have several consequences apart from inability to work or earn as before. To be specific, the victim of the accident who suffers from permanent disability will not be in a position to carry on his normal house-hold activities in his house. More than anything else, he will be brooding over the disability day by day till the end of his life and suffer untold mental agony. The compensation for pain and suffering is only for the pain and suffering undergone at the time of injury and the treatment which followed. Thus, compensation for permanent disability will cover the mental agony to be suffered by the injured in his future life and his inability to attend to his normal house-hold activities.'

In view of the aforesaid observation of the Supreme Court, this Court is inclined to award a sum of Rs.50,000/- in addition to the sum of Rs.65,000/- awarded by the Tribunal under these two heads and is accordingly, awarded. The enhanced sum of Rs.50,000/- shall carry interest only at 7.5% p.a. from the date of filing of this appeal.

7. However, the compensation awarded by the Tribunal under other heads viz., Rs.7,500/- towards loss of income during treatment period, i.e. for three months, Rs.2,000/- towards transportation charges, Rs.3,000/- for extra-nourishment, Rs.15,000/- towards pain and suffering, in the opinion of this Court, appears to be fair, just and reasonable and hence, the same warrants no interference.

8. In fine, this appeal is partly allowed by enhancing the compensation awarded by the Tribunal from Rs.92,500/- to 1,42,500/-. No costs. Consequently, connected Miscellaneous Petition is closed. The 2nd respondent Insurance Company is directed to deposit the entire compensation amount with interest and costs, after deducting the amount, if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal shall transfer

the same to the Savings Bank account of the appellant/claimant,
through RTGS, within one week thereafter.

Sd/-
Asst.Registrar (CS V)

/true copy/
Sub Asst. Registrar

mkn/rk

To

1.The V Judge,
Court of Small Causes,
(Motor Accident Claims Tribunal),
Chennai.

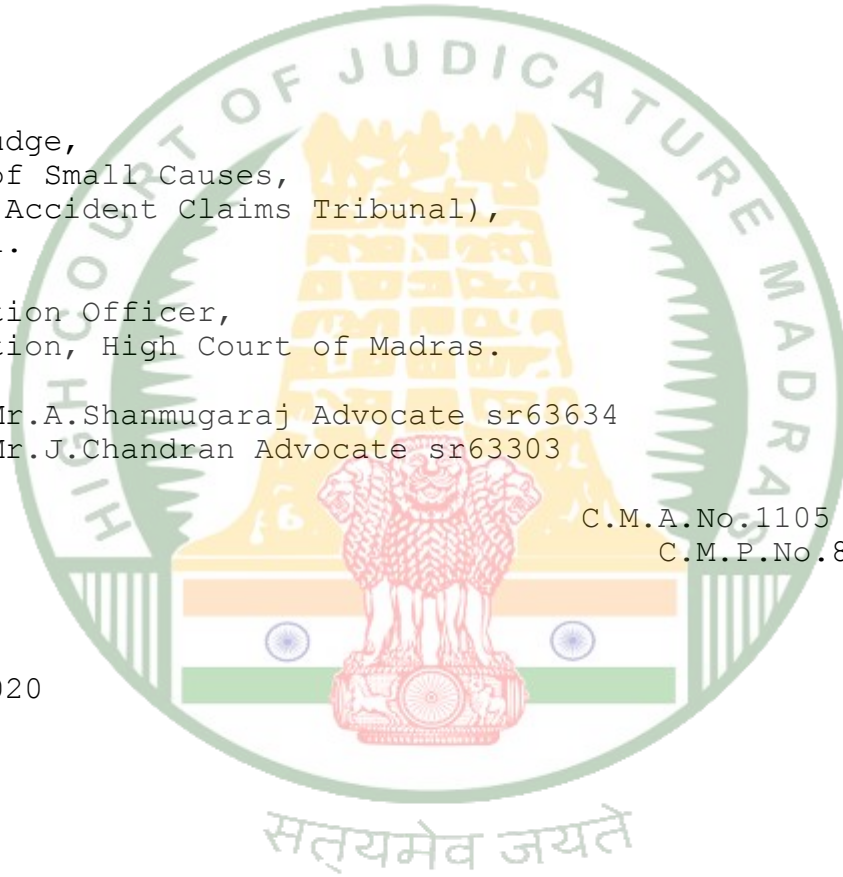
2.The Section Officer,
VR Section, High Court of Madras.

+1 cc to Mr.A.Shanmugaraj Advocate sr63634

+1 cc to Mr.J.Chandran Advocate sr63303

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