

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1122 of 2007

S.Kumar

.. Appellant/Claimant

Vs.

1. S.Murugan

2. The National Insurance Company Ltd.,
403, Mettur Road,
Bhavani.

.. Respondents/Defendants

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.11.2006 made in M.C.O.P.No.791 of 2004 on the file of the Motor Accident Claims Tribunal, I Additional Sub-Court, Erode.

For Appellant : Mr.K.Govi Ganesan

For R2 : Mrs.R.Sree Vidhya

J U D G M E N T

According to the appellant/claimant, on 28.08.2004 at about 4.00am, while he was standing along with his bi-cycle at Vengamedu, near MMCC Complex, a Minidor Auto bearing Regn.No.TN38 P4441 belonging to the first respondent and insured with the second respondent insurance company, came in a rash and negligent manner and dashed against him. Due to the said impact, he sustained grievous injuries. Stating so, he filed a claim petition, claiming a compensation of Rs. 2,00,000/-. The Tribunal, considering the pleadings, oral and documentary evidence, awarded a total compensation of Rs.40,000/- with interest at 7.5%pa from the date of petition. Feeling aggrieved and being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has preferred this appeal seeking enhancement of the same.

2.The learned counsel for the appellant submitted that the compensation awarded by the Tribunal is inadequate and the same has to be enhanced substantially, considering the nature of the injuries sustained and the period of treatment undertaken by the appellant/claimant.

3.Per contra, the learned counsel for the second respondent insurance company submitted that based on the oral and documentary evidence adduced by the parties, the Tribunal has awarded the just compensation, which warrants no interference at the hands of this Court.

4.Heard both sides and perused the records.

5.This is the claimant's appeal seeking enhancement of the compensation awarded by the Tribunal. Hence, there is no requirement for this Court to go into the findings of the Tribunal on negligence and liability of the second respondent insurance company.

6.PW1/appellant/claimant has deposed in his evidence that he was aged about 35 years and was earning Rs.5,000/- by balloon business; in the accident, he sustained fracture in left leg, besides receiving grievous injuries in all over the body, due to which, he finds it difficult to walk, ride bi-cycle and do the business, as done previously; and his cycle was fully damaged. P.W.2/doctor has deposed that he examined the claimant on 18.10.2006 and he assessed his disability at 20%. Ex.P9 is the disability certificate. Ex.P10 is X ray. Based on the materials and evidence produced by the appellant/claimant, the Tribunal has awarded Rs.25,000/- towards permanent disability, which, in the opinion of this Court, appears to be on the lower side and the same is hereby enhanced to Rs.40,000/- by granting Rs.2,000/- per percentage of disability. Similarly, the award of Rs.10,000/- towards pain and suffering by the Tribunal is hereby enhanced to Rs.20,000/- by this Court, taking note of the nature of the injuries sustained by the appellant/claimant. However, there is no modification with regard to the award of Rs.5,000/- towards extra nourishment and the rate of interest at 7.5%pa by the Tribunal. Thus, the compensation of Rs.40,000/- awarded by the Tribunal is enhanced to Rs.65,000/- by this Court. It is made clear that the enhanced sum of Rs.25,000/- shall carry interest at 7.5% pa only from the date of filing of this appeal.

7.In fine, this appeal is partly allowed. No costs. The second respondent insurance company is directed to deposit the enhanced compensation of Rs.65,000/- with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the

same, less the amount if any, already withdrawn, by making proper application before the Tribunal.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gbi/rk

To

1. The Motor Accident Claims Tribunal,
I Additional Sub-Judge, Erode.

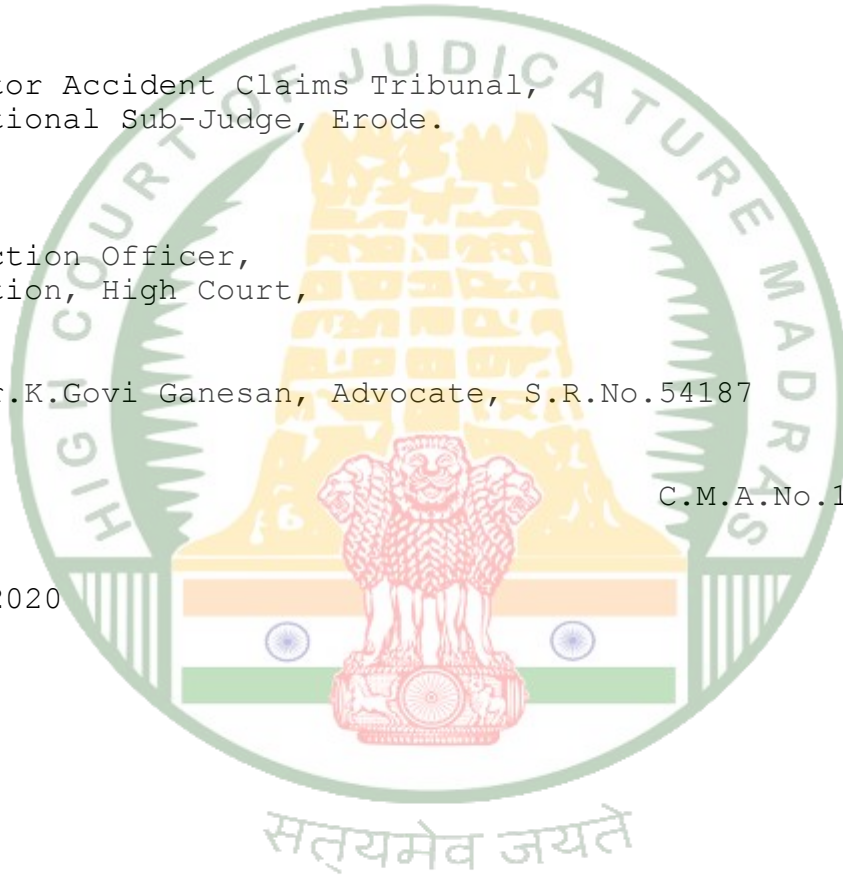
Copy To

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

+1cc to Mr.K.Govi Ganesan, Advocate, S.R.No.54187

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SSI(CO)
CS/10/01/2020



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