

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.1466 of 2011

S.Ganesan

...Appellant/Petitioner

Vs.

1.G.Arumugam(R1 was set exparte in the trial Court)

2.The New India Assurance Co. Ltd.,

East Coast Chambers,

No.92, G.N.Chetty Road,

T.Nagar, Chennai 17.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 22.01.2011 in M.C.O.P.No. 3961 of 2009, on the file of the III Judge, Motor Accidents Claims Tribunal (Small Causes Court), Chenani.

For Appellant : Mr.R.Arundattan for C & K Law Firm

For Respondents : Mr.M.Krishnamoorthy for R2
R1 - Ex-parte

JUDGMENT

The appellant is the claimant in M.C.O.P.No. 3961 of 2009, on the file of the III Judge, Motor Accidents Claims Tribunal (Small Causes Court), Chenani. He has filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.21,00,000/- for the injuries sustained by him in a road accident that took place on 16.10.2009.

2. The brief case of the appellant/claimant is as follows:

On 16.10.2009, at about 16.30 hours, the appellant/claimant was crossing Rajamannar salai, kannigapuram from North to South direction among other persons. At that time, an Ambassador car bearing Registration No. TN 05 D 4466, belonging to the first respondent herein, hit him, as a result of which, he sustained grievous. The appellant/ claimant's left leg below knee was amputated. According to the appellant/claimant, the rash and

negligent driving of the driver of the Ambassador car bearing Registration No. TN 05 D 4466 was the cause of the accident, and that, since, the said car was insured with the second respondent herein, both the first and second respondents herein, are jointly and severally liable to pay compensation of Rs.21,00,000/- to him.

3. The owner of the said car was absent before the Tribunal and therefore, he was set ex-parte. The New India Assurance Company Limited contested the claim petition. The learned Tribunal, after analysing the evidence on record, awarded a compensation of Rs.7,62,500/- together with interest at the rate of 7.5% per annum to the appellant/claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard both sides and perused the materials available on record.

5. The manner of the accident and the rash and negligent driving of the driver of the first respondent herein are not disputed by both the parties. In regard to, the injuries sustained by the appellant/claimant, he himself was examined as PW1. Dr. J.RR.Thiyagarajan has assessed the disability as 70% and the same was accepted by the Tribunal. Thiru. S.Senthil Strinivasan (PW2), the owner of 'Saravana Furnitures' has stated that he has filed Loss of pay cum Service Certificate (Ex.P8), wherein, he has stated that the appellant/claimant was working as sales man in his shop and was paid a sum of Rs.9,000/- per month. However, it appears that the Tribunal has fixed the income of the appellant/claimant only at Rs.5,000/- per month. Taking into consideration that the owner of the shop has been examined as PW2, I feel that the income of the appellant/claimant can be fixed at Rs.7,500/- per month. Since, the age of the appellant/claimant is 46 on the date of the accident, the multiplier to be adopted in the instant case is 13 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Calculation:

$$\begin{aligned}\text{Loss of earning capacity} &= \text{Rs.7,500/-} \times 12 \times 13 \times 70/100 \\ &= \text{Rs.8,19,000/-}\end{aligned}$$

The appellant/claimant would not have been in a position to attend to his work at least for five months because of below knee amputation. Therefore, the appellant/claimant is entitled to a sum of Rs.37,500/- (Rs.7,500 x 5) towards the head 'loss of income'.

6. Coming to the non-conventional heads, since the appellant/ claimant has suffered below knee amputation, the award under the head 'loss of amenities of life' is enhanced to Rs.90,000/- as against Rs.50,000/- awarded by the Tribunal. Apart from the above said amounts, the appellant/claimant is also entitled to a sum of Rs.15,000/- towards 'attender's charges'. All other heads awarded by the Tribunal is not disturbed.

7. Accordingly, the award of the Tribunal in M.C.O.P.No. 3961 of 2009 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of income	Rs.25,000/-	Rs.37,500/-
2.	Transportation	Rs.15,000/-	Rs.15,000/-
3.	Extra nourishment	Rs.10,000 /-	Rs.10,000 /-
4.	Damage to clothes	Rs.500/-	Rs.500/-
5.	Medical expenses	Rs.66,000/-	Rs.66,000/-
6.	Loss of amenities of life	Rs.50,000/-	Rs.90,000/-
7.	Pain and sufferings	Rs.50,000/-	Rs.50,000/-
8.	Loss of earning capacity	Rs.5,46,000/-	Rs.8,19,000/-
9.	Attender's charges	NIL	Rs.15,000/-
	Total	Rs. 7,62,500/-	Rs.11,03,000/-

The compensation awarded by the Tribunal is enhanced from Rs.7,62,500/- to Rs.11,03,000/- which shall carry interest at the rate of 7.5% per interest.

8. In the result,

(i) The Civil Miscellaneous Appeal is allowed in part. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.7,62,500/- to Rs.11,03,000/-.

(iii) The second respondent herein - The New India Assurance Company Limited is directed to deposit the entire compensation of Rs.11,03,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim

petition till the date of deposit to the credit of M.C.O.P.No. 3961 of 2009, dated 22.01.2011, on the file of the III Judge, Motor Accidents Claims Tribunal (Small Causes Court), Chennai within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the appellant/claimant is permitted to withdraw the entire amount after following the due process of law.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
III Court of Small Causes,
Chennai.

+1cc to M/s.M.Krishnamoorthy, Advocate Sr.12783
+1cc to M/s.C.Munusamy, Advocate Sr.13397

C.M.A.No.1466 of 2011

rsi[co]
srg 27/08/2019

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