

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1327 of 2012

S.Deivasigamani

.. Appellant/ Petitioner

vs.

1.C.Periyaswamy

2.M/s.United India Insurance Co. Ltd.,
Branch Office,
19/2A, Junction Main Road,
Opp. to Raja Kalyanamandapam,
Near Five Roads, Salem - 4. Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 20.12.2007 passed in MCOP.No.634 of 2005 on the file of the Motor Accident Claims Tribunal / Additional Sub Court, Salem.

Appellant : Mr.S.Kalyanaraman

R1 : Mr.T.Ganesan

R2 : Mr.C.Paranthaman

J U D G M E N T

The appellant is the claimant in MCOP.No.634 of 2005 on the file of the Motor Accident Claims Tribunal / Additional Sub Court, Salem. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.10,00,000/- for the injuries sustained by him in a road accident on 08.04.2005.

2. The case of the claimant in nutshell is as follows:

On 08.04.2005, he was riding his motorcycle with one Elango as a pillion rider along Omalur Main Road and at about 02.30 p.m, a speeding lorry bearing Registration No. TDS 1652, hit the motorcycle, as a result whereof, he fell down and sustained injuries all over his body.

3. According to the claimant, the rash and negligent

driving of the driver of the lorry belonging to the first

respondent was the cause of the accident and that since the said lorry was insured with the second respondent/United India Insurance Company Limited, the owner and the insurer of the lorry are jointly and severally liable to pay compensation.

4. The owner of the lorry remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent / United India Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Additional Subordinate Judge / Motor Accident Claims Tribunal, Salem after analysing the evidence on record, awarded a compensation of Rs.3,07,000/- together with interest at the rate of 7.5% per annum to the claimant. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Heard Mr.S.Kalyanaraman, learned counsel appearing for the appellant, Mr.T.Ganesan, learned counsel appearing for the first respondent and Mr.C.Paranthaman, learned counsel appearing for the second respondent.

6. A perusal of the discharge summaries (Ex.A4 and Ex.A12) shows that the claimant had sustained following injuries:

- i. Left thigh punctured wound about 2cm deformed. Distal Pulse feet.
- ii. Left forearm deformed - distal pulse-felt.
- iii. Right shoulder degloving injury exposing Deltoid.
- iv. Laceration over Right side of the forehead.
- v. Ventilatory support, Wound debridement Right shoulder, Upper tibial pin fraction left side done under GA on 08.04.2005.
- vi. Under local ICD done Right side & connected to under water seal on 09.04.2005.
- vii. ORIF of Left Ulna # and reduction of Radial head dislocation done under GA on 11.04.2005.
- viii. DHS and Bowel plate fixation of left trochanteric # with Rail external fixater application for the segmental left femur # done under GA on 16.04.2005.
- ix. Elevation of Right Zygoma with interossious wire fixation for Right Zygoma done under GA on 25.04.2005.

Since the claimant is an agriculturist, adopting multiplier method is warranted in the present case as per the decision in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343. Dr.Shanmugapriya (PW2) has assessed the partial permanent disability as 40%. Since the disability of 40% cannot be for the whole body, 10% disability is taken up for calculating "loss of earning capacity". Since the appellant / claimant

was aged 29 years on the date of the accident, the proper multiplier to be adopted in the instant case is 17, as per the decision in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Since the accident took place in the year 2005, a sum of Rs.3,000/- is fixed as notional monthly income of the claimant.

Loss of earning capacity
= Rs.3,000/- x 12 x 17 x 10/100
= Rs.61,200/-

7. The award passed by this Court under various heads is extracted hereunder:

S. No.	Head	Amount granted
1.	Loss of earning capacity	Rs.61,200/-
2.	Pain and sufferings	Rs.50,000/-
3.	Transportation	Rs.5,000/-
4.	Extra nourishment	Rs.10,000/-
5.	Attender's charges	Rs.2,000/-
6.	Loss of amenities	Rs.10,000/-
7.	Damages to cloth	Rs.500/-
8.	Loss of income	Rs.18,000/-
9.	Medical bills	Rs.2,50,000/-
Total		Rs.4,06,700/-

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.3,07,000/- to Rs.4,06,700/- which would carry interest at the rate of 7.5% per annum.

9. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.3,07,000/- to Rs.4,06,700/-.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, within three weeks from the date of this orders and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The first respondent and second respondent / United India Insurance Company Limited are directed to deposit the enhanced compensation amount i.e., Rs.4,06,700/- (less the amount already deposited) jointly and severally, 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 MCOP.No.634 of 2005 on the file of the Motor Accident Claims Tribunal / Additional Sub Court, Salem within a period of six weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mtl

To

1. The Motor Accidents Claims Tribunal,
The Additional Subordinate Judge,
Salem.

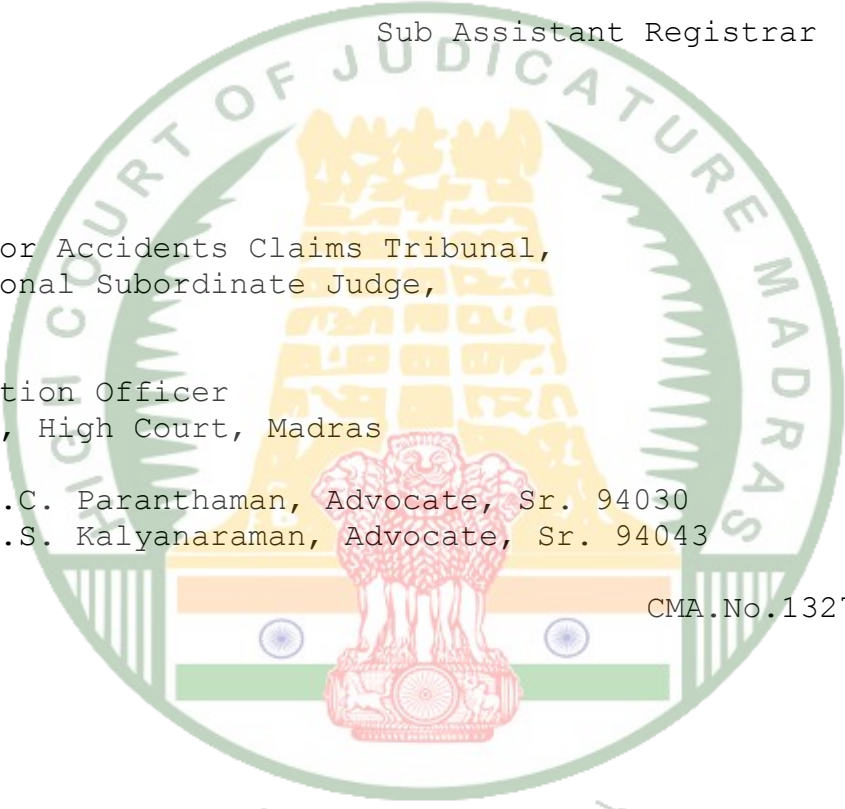
2. The Section Officer
VR Section, High Court, Madras

1 cc to MR.C. Paranthaman, Advocate, Sr. 94030

1 cc to MR.S. Kalyanaraman, Advocate, Sr. 94043

CMA.No.1327 of 2012

LN (CO)
kk 6/1



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