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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.2010 of 2013

Balamurugan ... Appellant/Claimant
vs.

1.Kumaran

2.Mathiyazhagan

2.National Insurance Company Limited,
Rep. by its Branch Manager,
40, Rastha Manaveli Street,
No.2, Road, Mayiladuthurai. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 21.03.2012 passed in MCOP.No.19 of 2011 on the file of the Motor Accident Claims Tribunal / District Judge, Karaikal.

For Appellant : Mr.T.Susindran

For Respondents : Mr.J.Chandran for R3
No appearance for R1 and R2

J U D G M E N T

The appellant is the claimant in MCOP.No.19 of 2011 on the file of the Motor Accident Claims Tribunal / District Judge, Karaikal. He filed the claim petition under Sections 140 and 166(1) of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident on 22.06.2010.

2. The case of the claimant is that on 22.06.2010, he was riding his TVS XL motorcycle along Bharathiar Main Road, Kottucherry and at about 02.15 pm, a speeding TATA Indica Car bearing Registration No. TN 51 C 0185 hit the motorcycle, as a result of which, he fell down and sustained grievous injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the TATA Indica Car belonging to the second respondent was the cause of the accident and that since the said Car was insured with the National Insurance Company, the driver, the owner and the insurer are jointly and severally liable to pay compensation.



before the Tribunal and therefore he was set exparte. The second and third respondents contested the claim petition. The learned District Judge / Motor Accident Claims Tribunal, Karaikal, while awarding compensation of Rs.98,840/- together with interest at the rate of 7.5% per annum, directed the National Insurance Company to pay the compensation to the claimant in the first instance and then recover the same from the owner of the TATA Indica Car, since there was no fitness certificate for the said car on the date of the accident. 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.

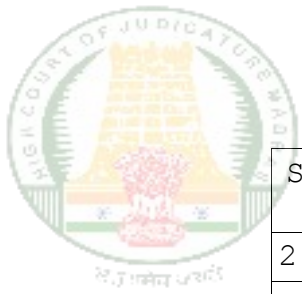
4. Heard Mr.T.Susindran, learned counsel appearing for the appellant / claimant and Mr.J.Chandran, learned counsel appearing for the third respondent. No appearance on behalf of the first and second respondents.

5. A perusal of the discharge summary (Ex.P6) shows that the appellant/claimant has sustained a fracture of Communitated Subtrochantric femur (left) with fracture of Malleolus (left) and crush injury on his left foot. Since he was working as a mason, he would definitely find it difficult to continue his job and therefore, 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.Angathakumar (PW2), has assessed the partial permanent disability as 51%. Since the disability of 51% cannot be for the whole body, 10% disability is taken up for calculating "loss of earning capacity". Since the appellant / claimant was aged 35 years on the date of the accident, the proper multiplier to be adopted in the instant case is 16, as per the decision in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Since the accident took place in the year 2010, a sum of Rs.4,500/- is fixed as notional monthly income of the claimant. The "loss of earning capacity" is calculated as follows:

Loss of earning capacity:
= Rs.4,500/- x 12 x 16 x 10/100
= Rs.86,400/-

On account of the accident, the appellant / claimant would not have been in a position to attend to his routine work atleast for 3 months and therefore, a sum of Rs.13,500/- (Rs.4,500/- x 3 months) is awarded towards "loss of income". The award passed by this Court under various heads is extracted hereunder:

S.No .	Head	Amount granted by this Court
1.	Loss of earning capacity	Rs.86,400/-



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S.No .	Head	Amount granted by this Court
2.	Pain and sufferings	Rs.20,000/-
3.	Transportation	Rs.5,000/-
4.	Extra nourishment	Rs.10,000/-
5.	Attender's charges	Rs.2,000/-
6.	Damage to clothes	Rs. 500/-
7.	Loss of income	Rs.13,500/-
8.	Medical Bills	Rs.20,840/-
9.	Loss of amenities	Rs.10,000/-
Total		Rs.1,68,240/-

6. 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.98,840/- to Rs.1,68,240/-, which shall carry interest at the rate of 7.5% per annum.

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

(iv) The third respondent / National Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.1,68,240/- (less the amount 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 MCOP.No.19 of 2011 on the file of the Motor Accident Claims Tribunal / District Judge, Karaikal within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the TATA Indica Car bearing Registration No. TN 51 C 0185 on the same cause of action.

(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-VIII)

//True Copy//

Sub Assistant Registrar

Mbi



To

1.The Motor Accidents Claims Tribunal,
District Judge, Karaikal.

2.VR Section,
High Court of Madras,
Chennai.

+lcc to Mr.T.Susindran, Advocate, S.R.No. 97868

+lcc to Mr.J.Chandran, Advocate, S.R.No. 97525

CMA.No.2010 of 2013

RR(CO)
GN(12/08/2021)