

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.3397 of 2012

C.Sampath Kumar

... Appellant

.Vs.

1.Loganathan

2.Reliance General Insurance Company Limited,
No.NTG Complex,
B1, 14, Ramasamy Street,
West Tambaram, Chennai - 600 045.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 01.12.2011 passed in M.C.O.P.No.3213 of 2009 on the file of the Motor Accident Claims Tribunal / Additional District and Sessions Court, Fast Track Court No.I, Chennai.

For Appellant : Mr.A.Shanmugaraj
For R1 : No appearance
For R2 : Mr.S.Arunkumar

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.3213 of 2009 on the file of the Motor Accident Claims Tribunal / Additional District and Sessions Court, Fast Track Court No.I, Chennai. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.6,00,000/- for the injuries sustained by him in a road accident on 30.06.2009.

2. The case of the claimant is that on 30.06.2009, he was riding his motorcycle bearing Registration No. TN 09 AW 4278 along Keelkattalai - Saidapet Road and at about 09.30 P.M., a speeding Auto bearing Registration No. TN 09 AK 6788 hit his motorcycle, as a result of which, he fell down and sustained grievous injuries. According to the claimant, the rash and negligent driving of the driver of the Auto belonging to the first respondent was the cause of the accident and that since the said vehicle was insured with the Reliance General Insurance Company, the owner and the insurer of the Auto are jointly and severally liable to pay compensation.

3. The owner of the Auto remained absent before the Tribunal and therefore he was set exparte. The Reliance General Insurance Company contested the claim petition on all the grounds available to the insured. The learned Additional District and Sessions Judge / Motor Accident Claims Tribunal, Fast Track Court No.I, Chennai, after analysing the evidence on record, awarded a compensation of Rs.2,80,000/- 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.

4. Mr.A.Shanmugaraj, learned counsel appearing for the appellant / claimant contended that though the claimant has adduced evidence to show that he was earning a sum of Rs.8,000/- per month, the Tribunal fixed the

notional monthly income of the claimant only as Rs.5,000/-. It is his further contention that no amounts were awarded towards "transportation", "extra nourishment" and "attender's charges". He therefore prayed for enhancement of compensation.

5. Per contra, Mr.S.Arunkumar, learned counsel appearing for the Reliance General Insurance Company contended that the Tribunal after analysing all the aspects of the case has awarded a just compensation of Rs.2,80,000/- together with interest at the rate of 7.5% per annum and the same need not be disturbed at this stage.

6. No appearance on behalf of the first respondent.

7. In the claim petition, it is contended that the claimant is working as a Manager cum Supervisor in Balaji Lorry Service. The proprietor of the Balaji Lorry Service has been examined as PW3 and the salary certificate of the claimant is marked as Ex.P11. Except the oral evidence of PW3 and the certificate issued by him, no other acceptable documentary evidence is adduced to show the actual income of the claimant. The Registers maintained by the said Lorry Service are not produced before the Tribunal. Therefore, the Tribunal was right in fixing the monthly notional income of the claimant as Rs.5,000/-. A perusal of the discharge summary (Ex.P5) shows that the claimant had sustained fracture of both bones (left leg). It is also seen that he

underwent "open reduction internal fixation left fibula and intramedullary nailing left tibia". Dr.N.Saichandran (P.W.2) had assessed the partial permanent disability as 65%. The Tribunal was right in fixing 20% in respect of whole body disability, adopting multiplier method and awarding a sum of Rs.1,80,000/- towards "loss of earning capacity". On account of the accident, the claimant would not have been in a position to attend to his routine work atleast for three months and therefore a sum of Rs.15,000/- (Rs.5,000/- 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.	Partial permanent disability	Rs.1,80,000/-
2.	Loss of amenities	Rs.50,000/-
3.	Pain and sufferings	Rs.10,000/-
4.	Medical expenses	Rs.40,000/-
5.	Extra nourishment	Rs.5,000/-
6.	Transportation	Rs.5,000/-
7.	Attender's charges	Rs.2,000/-
8.	Loss of income	Rs.15,000/-
Total		Rs.3,07,000/-

8. The quantum of compensation awarded by the Tribunal is enhanced from Rs.2,80,000/- to Rs.3,07,000/-, 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.2,80,000/- to Rs.3,07,000/-.

(iii) The respondents 1 and 2 are jointly and severally directed to deposit the enhanced compensation amount i.e., Rs.3,07,000/- (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 M.C.O.P.No.3213 of 2009 on the file of the Motor Accident Claims Tribunal / Additional District and Sessions Court, Fast Track Court No.I, Chennai, within a period of four weeks from the date of receipt of a copy of this order.

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

18.11.2019

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Index : Yes/No

Internet : Yes/No

Speaking / Non-speaking order

To

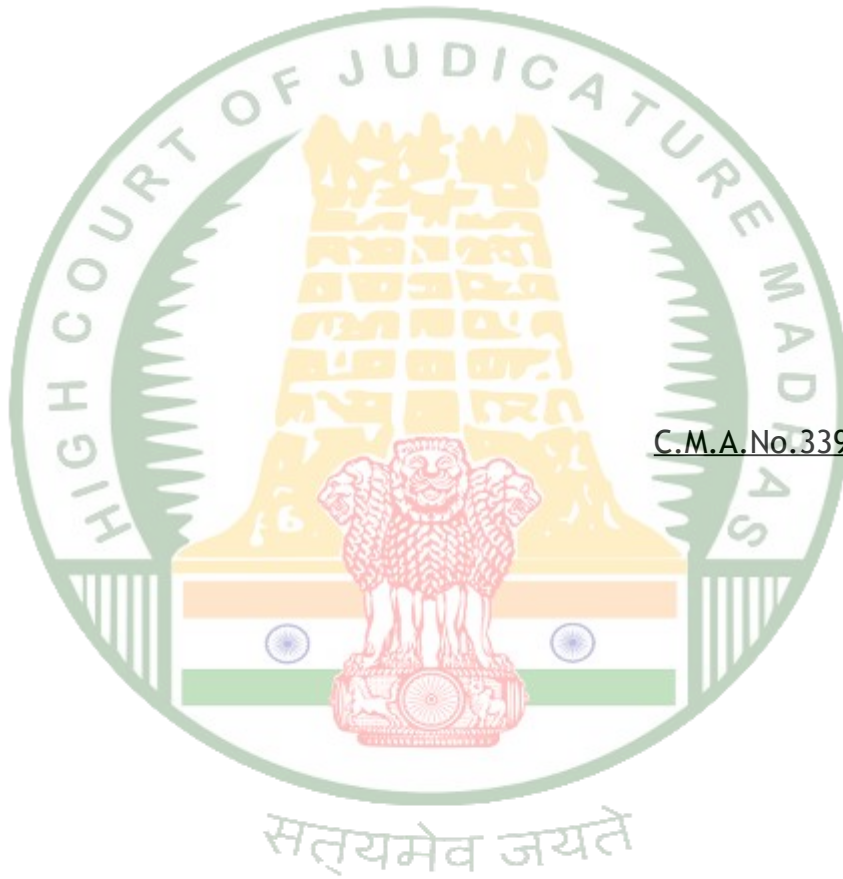
The Motor Accidents Claims Tribunal,
The Additional District and Sessions Court,

<http://www.judis.nic.in>

Fast Track Court No.I,
Chennai.

R. HEMALATHA, J.

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