

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.592 of 2012

S.Poovannan

...Appellant/Petitioner

Vs.

1.C.Babyammal

(Exparte before the Tribunal)

2.ICICI Lombard General Insurance Co.Ltd.,  
No.140, 3rd Floor,  
Nungambakkam High Road,  
Chennai-34.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 15.07.2011, in M.C.O.P.No. 869 of 2009 on the file of the Motor Accidents Claims Tribunal, the Additional District Sessions Judge, IV Fast Track Court, Chennai.

For Appellant : Mr.A.Shanmugaraj  
For R1 : Exparte before the Tribunal  
For R2 :Mrs.R.Sreevidhya

JUDGMENT

The appellant is the claimant in M.C.O.P.No.869 of 2009, on the file of the Motor Accidents Claims Tribunal, the Additional District Sessions Judge, IV Fast Tract Court, Chennai. He has filed the above said 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 that took place on 13.07.2008.

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

(i) The appellant/claimant was aged 23 years on the date of the accident. He was working as an Assistant Engineer, Quality Controller in Nagman Industries, Bangalore Road, Sembarambakkam Village, near E.V.P.Engineering College, Kancheepuram District, earning a sum of Rs.7,600/- per month.

(ii) On 13.07.2008 at about 9.00 pm., the appellant/claimant was riding his motor-cycle TN 07 AB 4475 along Vengal to Periapalyam Road from South to North, the driver of the lorry bearing Registration No.AP 31 U 4057 drove in high speed in rash and negligent manner dashed against the appellant/claimant. As a result, he was thrown out and sustained grievous injuries. He was taken to Stanley Hospital where he was given First Aid and thereafter he was treated in New Hope Medical Centre as in-patient from 13.07.2008 to 15.07.2008 and then treated in M.N.Hospital Centre as in-patient from 15.07.2008 to 21.07.2008 and then treated at Bone & Joint Hospital from 25.07.2008 to 27.08.2008. Thereafter he undertook treatment as out-patient. Due to the said accident, the appellant/claimant sustained (i) fracture of right knee (condyle tibia), (ii) fracture of right femoral condyle, (iii) fracture of right knee cup and injuries all over the body.

3. The owner of the motorcycle bearing Registration No. TN 07 AB 4475, has not appear to defend his case before the Tribunal, and therefore, he was set ex-parte. The ICICI Lombard General Insurance Company Limited contested the claim petition. Before the Tribunal, on the side of the appellant/claimant, PW1 to PW3 were examined and Exhibits.P1 to P20 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and Exhibits R1 and R2 were marked.

4. After going through the oral and documentary evidence adduced before the Court, the Tribunal awarded a sum of Rs.4,71,000/- together with interest at the rate of 7.5% per annum and directed the first and second respondents therein to jointly and severally pay the said compensation to the appellant/claimant. Not 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. After hearing both the parties and perusing the materials available on records, it is seen that the rash and negligence fixed on the part of the rider of the said motorcycle is not in dispute and the same is hereby confirmed.

6. The learned counsel appearing for the appellant/claimant would content that, in the above said accident, the appellant/claimant has suffered (i) fracture of right knee

(condyle tibia), (ii) fracture of right femoral condyle, (iii) fracture of right knee cup and injuries all over the body. He would contend that the appellant/claimant was admitted as an inpatient in Stanley Hospital where he was given First Aid and thereafter he was treated in New Hope Medical Centre as in-patient from 13.07.2008 to 15.07.2008 and then treated in M.N.Hospital Centre as in-patient from 15.07.2008 to 21.07.2008 and then treated at Bone & Joint Hospital from 25.07.2008 to 27.08.2008. However, the Tribunal has awarded only a meagre amount as compensation to the appellant/claimant. Therefore, he would contend that the compensation awarded by the Tribunal should be enhanced.

7. The learned counsel appearing for the respondents/ ICICI Lombard Insurance Company Limited would contend that the appellant/claimant has not suffered any 'functional disability', but, the Tribunal has adopted multiplier method and the same is erroneous. He would also contend that the award passed by the Tribunal under the other heads are just and reasonable and they need not be disturbed, at this juncture.

8. Admittedly, the injured was 23 years old at the time of the accident, dated 13.07.2008 and he was earning Rs.7,600/- per mensem as per the documentary evidence placed before the Tribunal. In the accident, he has suffered (i) fracture of right knee (condyle tibia), (ii) fracture of right femoral condyle, (iii) fracture of right knee cup and injuries all over the body.

9. Exhibit P3 is the discharge summary of New Hope Medical Centre with the date of admission on 13.07.2008 and the date of discharge on 15.07.2008. The diagnosis is compound comminuted fracture of right patella with right tibial condyle fracture with chip fracture femoral condyle with fracture both bones right leg. Wound debridement, patelloectomy and knee spanning external fixator application done.

10. Exhibit P4 is the discharge summary of M.N.Orthopaedic Hospital with the date of admission on 15.07.2008 and the date of discharge 21.07.2008. The diagnosis is Grade III B compound fracture knee and both bones leg right external fixation has been done and on 18.07.2008, the wound debridement of right knee was done. Xrays have been taken. Ex.P5 is the X-ray.

11. Exhibit P6 is the discharge summary of Bone and Joint Hospital with the date of admission 25.07.2008 and date of discharge 28.08.2008. The final diagnosis is compound #lateral femoral condyle and lateral tibial condyle right, comminuted # patella with K-wire insitu, # both bones right leg with ex fix insitu, infected sutured wounds right knee.

12. Exhibit P11 is the medical bills for Rs.3,36,253.75. Exhibit P12 is the Xerox copy of the driving licence of the appellant/claimant. Exhibit P13 is the Xerox copy of the Certificate of Bachelor Degree of Engineering. Exhibit P14 is the Salary slip, wherein the net salary is Rs.7166/-. Exhibit P15 is the appointment offer letter to the appellant/claimant from Nagman Instruments and Electronics Private Limited. Exhibit P16 is the Confirmation letter.

13. Thus, with medical evidence of P.W.2 Doctor Sai Chandran and P.W.3 Doctor Gaurav Kumar and Exhibit P9 disability certificate issued by P.W.2 goes to show that the appellant/claimant has suffered injury and disability has fixed at 75% is reasonable and accordingly, Rs.2,25,000/- (75x3000) is awarded towards 'disability'. As per Exhibit P11 medical bills, the Tribunal has awarded a sum of Rs.3,36,000/- towards 'treatment expenses' is confirmed.

14. It appears from the records that a number of times, the appellant/claimant has visited the 3 hospitals for surgery and hence, a sum of Rs.30,000/- is awarded towards 'transportation'. Taking into the nature of injuries and the appellant/claimant was taken 3 surgeries, a sum of Rs.80,000/- towards 'pain and sufferings' is awarded, Rs. 45,600/- (Rs.7600x6) is awarded towards 'loss of income', Rs.25,000/- is awarded towards 'loss of amenities', Rs.25,000/- is awarded towards 'attender charges' and Rs.15,000/- is awarded Rs.15,000/- is awarded towards 'nutrition'.

15. Accordingly, the award of the Tribunal in M.C.O.P.No. 869 of 2009 is modified as follows:

| Sl. No. | Particulars                       | Amount granted by the Tribunal | Amount granted by this Court |
|---------|-----------------------------------|--------------------------------|------------------------------|
| 1.      | Injuries                          | Rs. 50,000/-                   | ---                          |
| 2.      | Treatment expenses                | Rs.3,36,000/-                  | Rs. 3,36,000/-               |
| 3.      | Conveyance                        | Rs. 15,000/-                   | Rs. 15,000/-                 |
| 4.      | Pain & sufferings                 | Rs. 70,000/-                   | Rs. 80,000/-                 |
| 5.      | Loss of income (treatment period) | ----                           | Rs. 45,600/-                 |
| 6.      | Disability                        | ----                           | Rs.2,25,000 /-               |

| Sl. No. | Particulars       | Amount granted by the Tribunal | Amount granted by this Court |
|---------|-------------------|--------------------------------|------------------------------|
| 7.      | Loss of amenities | ----                           | Rs. 25,000/-                 |
| 8.      | Attender charges  | ----                           | Rs. 15,000/-                 |
| 9.      | Nutrition charges | ----                           | Rs. 15,000/-                 |
| 10.     | Transport charges | ----                           | Rs. 30,000/-                 |
|         | Total             | Rs.4,71,000/-                  | Rs.7,86,600/-                |

The compensation awarded by the Tribunal is enhanced from Rs.4,71,000/- to Rs.7,86,600/- which shall carry interest at the rate of 7.5% per annum.

16. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.4,71,000/- to Rs.7,86,600/-.

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of court fee.

(iv) The second respondent/ICICI Lombard Insurance Company Limited is directed to deposit the enhanced compensation amount awarded by this court, i.e., Rs.7,86,600/- (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. 869 of 2009, dated 15.07.2011, on the file of the Motor Accidents Claims Tribunal, Additional District Sessions Judge, IV Fast Track Court, Chennai within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the second respondent, the appellant/claimant is permitted to withdraw the same, in the manner known to law.

s/d-

Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

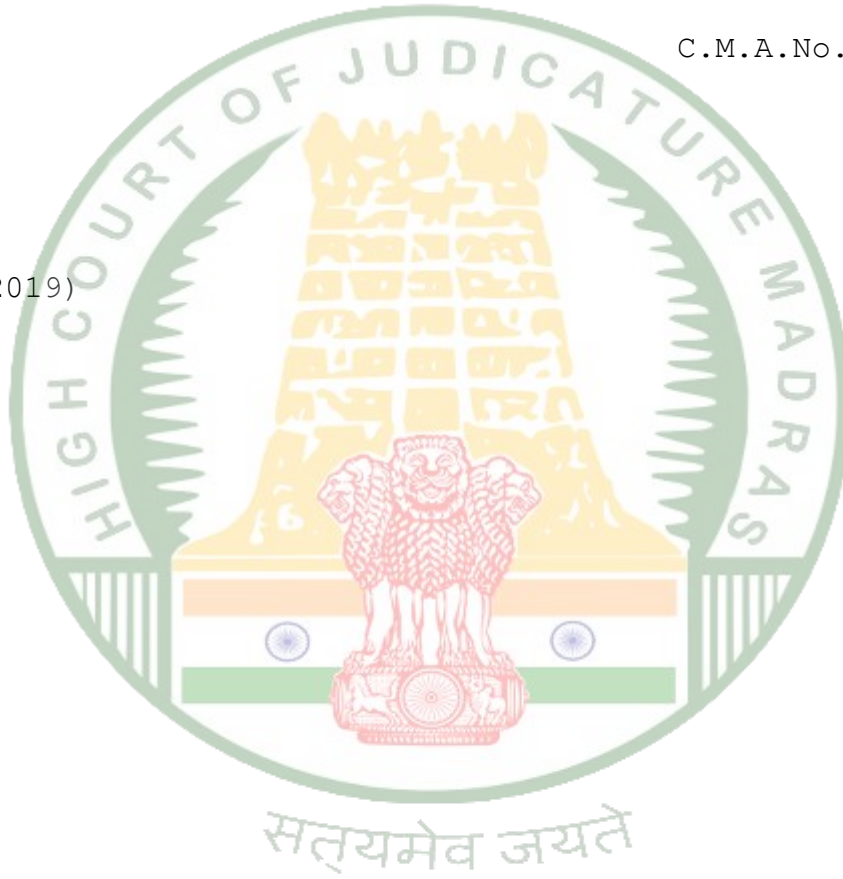
To

1.The Motor Accidents Claims Tribunal,  
The Additional District Sessions Judge,  
IV Fast Track Court, Chennai.

2.The Section Officer,  
V.R.Section,  
High Court,  
Madras.

C.M.A.No.592 of 2012

AK (CO)  
SP (29/07/2019)



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