

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.3368 of 2013

Elumalai ...Appellant/Petitioner  
vs.

1.Mohan

2.The Divisional Manager,  
Oriental Insurance Co. Ltd.,  
No.75, Krishnan Street,  
Tiruvannamalai. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 27.03.2010 passed in MCOP.No.497 of 2008 on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Thiruvannamalai.

Appellant: Mr.Terry Chellaraja

R1 : No appearance

R2 : Mrs.R.Sreevidhya

J U D G M E N T

The appellant is the claimant in MCOP.No.497 of 2008 on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Thiruvannamalai. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident on 28.07.2008.

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

On 28.07.2008, he was walking along Somavarakulam, Thiruvannamalai Road and at about 11.00 a.m, a speeding Bajaj Platina motorcycle bearing Registration No. TN 25 K 5706 hit him, as a result whereof, he sustained injuries all over his body.

3. According to the claimant, the rash and negligent riding of the rider of the motorcycle belonging to the first

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

4. The learned Principal Subordinate Judge / Motor Accident Claims Tribunal, Thiruvannamalai after analysing the evidence on record, awarded a compensation of Rs.82,000/- 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.Terry Chellaraja, learned counsel appearing for the appellant/ claimant and Mrs.R.Sreevidhya, learned counsel appearing for the second respondent. No appearance on behalf of the first respondent.

6. A perusal of the medical records shows that the appellant/claimant has sustained fracture of fibula and tibia bones and they were malunited. Since he was working as a labourer, the Tribunal was right in adopting multiplier method as per the decision in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343. Dr.K.Raveendran (PW2), has assessed the partial permanent disability as 30%. Since the disability of 30% cannot be for the whole body, 10% disability is taken up for calculating "loss of earning capacity". Since the appellant / claimant was aged 36 years on the date of the accident, the proper multiplier to be adopted in the instant case is 16, as per the decision in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. In the absence of actual income proof, the Tribunal has fixed the notional monthly income of claimant as Rs.800/- which is very meagre. Since it is contended in the claim petition that the claimant was working as a labourer, a sum of Rs.4,500/- is fixed as his notional monthly income, considering the year of the accident.

Loss of earning capacity:

$$\begin{aligned} &= \text{Rs.}4,500/- \times 12 \times 16 \times 10/100 \\ &= \text{Rs.}86,400/- \end{aligned}$$

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<br>. | Head                     | Amount granted by<br>this Court |
|-----------|--------------------------|---------------------------------|
| 1.        | Loss of earning capacity | Rs.86,400/-                     |
| 2.        | Pain and sufferings      | Rs.20,000/-                     |
| 3.        | Transportation           | Rs.5,000/-                      |
| 4.        | Extra nourishment        | Rs.5,000/-                      |
| 5.        | Attender's charges       | Rs.2,000/-                      |
| 6.        | Damage to clothes        | Rs.500/-                        |
| 7.        | Loss of income           | Rs.13,500/-                     |
| Total     |                          | Rs.1,32,400/-                   |

7. 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.82,000/- to Rs.1,32,400/-, 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 first respondent and the second respondent / Oriental Insurance Company Limited are directed to deposit the enhanced compensation amount i.e., Rs.1,32,400/- (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.497 of 2008 on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Thiruvannamalai within a period of four 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. It is made clear that the appellant / claimant is not entitled for interest for the delay period.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

mtl

To

The Motor Accidents Claims Tribunal,  
The Principal Subordinate Judge,  
Thiruvannamalai.

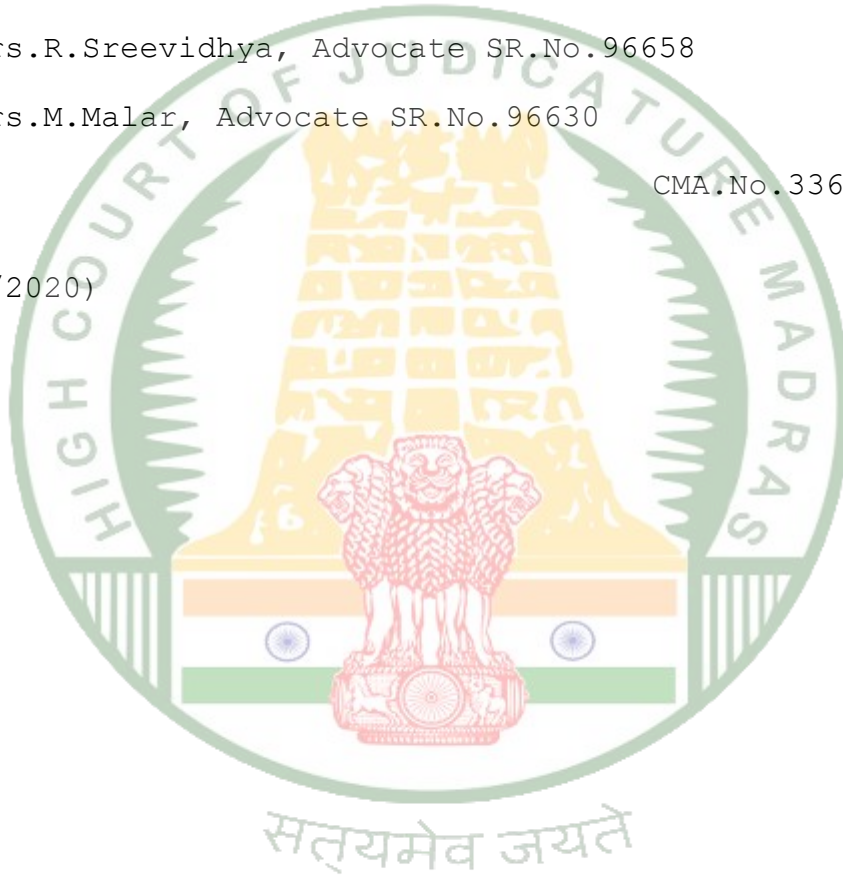
Copy To  
The Section Officer,  
VR Section, High Court, Madras

+1cc to Mrs.R.Sreevidhya, Advocate SR.No.96658

+1cc to Mrs.M.Malar, Advocate SR.No.96630

CMA.No.3368 of 2013

BS(CO)  
GMY(21/07/2020)



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