

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.3698 of 2013

Suresh ...Appellant/Petitioner
vs.

1.V.K.Selvam

2.Royal Sundaram Alliance Insurance Co. Ltd.,
No.45, Whites Road,
Chennai - 600 014. ... Respondents/Respondents

(R1 remained Exparte before the Tribunal)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 15.04.2013 passed in MCOP.No.5342 of 2005 on the file of the Motor Accident Claims Tribunal / II Judge, Court of Small Causes, Chennai.

For Appellant : Mrs.M.Malar

For Respondents : Mr.M.B.Gopalan for R2
Exparte for R1

J U D G M E N T

The appellant is the claimant in MCOP.No.5342 of 2005 on the file of the Motor Accident Claims Tribunal / II Judge, Court of Small Causes, Chennai. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.8,00,000/- for the injuries sustained by him in a road accident on 17.09.2004.

2. The case of the claimant is that on 17.09.2004, he was travelling as a pillion rider in a motorcycle bearing Registration No. TN 20 S 6583 belonging to the first respondent and insured with the second respondent along G.N.T road, near Puzhal Central Jail and at about 19.20 hours, the rider of the motorcycle rode the vehicle rashly and negligently and hit a bus bearing Registration No. TN 01 N 3279, as a result of which, he sustained grievous 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 Royal Sundaram Alliance Insurance Company, the owner and the insurer are jointly and severally liable to pay compensation.

4. The owner of the motorcycle remained absent before the Tribunal and therefore he was set exparte. The second respondent / Royal Sundaram Alliance Insurance Company contested the claim petition on all the grounds available to the insured. The learned II Judge, Court of Small Causes/ Motor Accident Claims Tribunal, Chennai after analysing the evidence on record, awarded a compensation of Rs.2,70,000/- 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 Mrs.M.Malar, learned counsel appearing for the appellant/ claimant and Mr.M.B.Gopalan, learned counsel appearing for the second respondent. No appearance on behalf of the first respondent.

6. A perusal of the discharge summaries (Ex.P3 to Ex.P6) shows that the appellant/claimant has sustained a fracture of right shaft femur and since he was working as a car driver, 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.J.R.R.Thiagarajan (PW2), has assessed the partial permanent disability as 95%. Since the disability of 95% cannot be for the whole body, 25% disability is taken up for calculating "loss of earning capacity". Since the appellant / claimant was aged 32 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. The accident took place in the year 2004 and therefore a sum of Rs.4,500/- is fixed as the notional monthly income of the appellant / claimant.

Loss of earning capacity:
= Rs.4,500/- x 12 x 16 x 25/100
= Rs.2,16,000/-

On account of the accident, the appellant / claimant would not have been in a position to attend to his routine work atleast for 12 months and therefore, a sum of Rs.54,000/- (Rs.4,500/- x 12 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.2,16,000/-
2.	Pain and sufferings	Rs.25,000/-
3.	Transportation	Rs.5,000/-
4.	Extra nourishment	Rs.10,000/-
5.	Attender's charges	Rs.5,000/-
6.	Damage to clothes	Rs.500/-
7.	Loss of income	Rs.54,000/-
Total		Rs.3,15,500/-

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.2,70,000/- to Rs.3,15,500/-.

(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 second respondent / Royal Sundaram Alliance Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.3,15,500/- (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.5342 of 2005 on the file of the Motor Accident Claims Tribunal / II Judge, Court of Small Causes, Chennai 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.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Mbi

To

1.The Motor Accidents Claims Tribunal,
The II Judge, Court of Small Causes,
Chennai.

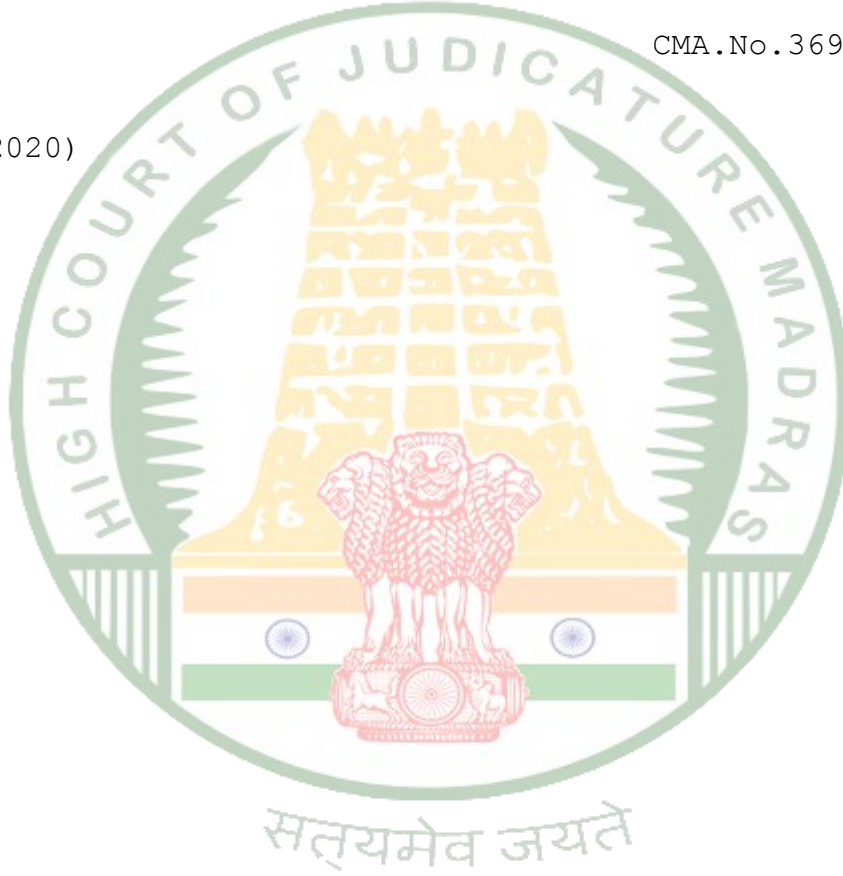
2.The Section Officer,
VR Section,
High Court of Madras.

+lcc to Mr.M.B.Gopalan, Advocate, S.R.No. 93479

+lcc to Mr.M.Malar, Advocate, S.R.No. 93100

CMA.No.3698 of 2013

JP(CO)
GN(01/09/2020)



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