

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.617 of 2013

M.Murugan

... Appellant/ Petitioner

...Vs...

1.T.Venkatraman1st Respondent/1st Respondent

2.M/s.Reliance General Insurance

Company Limited,

Rai's Tower, No.2054,

2nd Avenue, Anna Nagar,

Chennai 40.

...2nd Respondent/ 2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 29.08.2012 in M.C.O.P.No.559 of 2011 on the file of the Motor Accidents Claims Tribunal, VI Judge, Court of Small Causes, Chennai.

For Appellant : Mr.S.Sankaralingam

For Respondents: Mr.K.Moorthy for R2

R1 - Ex-parte

JUDGMENT

The appellant is the claimants in M.C.O.P.No.559 of 2011, on the file of the Motor Accident Claims Tribunal, the learned VI Judge, Small Causes Court, Chennai. He filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.12,62,000/- for the injury sustained by him in a road accident that took place on 08.01.2001. He was driving the auto rickshaw bearing Registration No.TN 09 AV 1437 by the proper side of St. Marrys Road, R.A.Puram by observing the traffic rules and regulations, to go to Abiramapuram along with passengers.

2.At that time, an auto bearing Registration No. TN 07 BB 3828 belonging to the first respondent, came from the opposite direction, hit the auto richshaw bearing Registration No.TN 09 AV 1437, as a result of which, he sustained grievous injuries. It is further contented by him that the rash and negligent driving of the driver of the auto bearing Registration No. TN 07 BB 3828 belonging to the first respondent, was the cause of the accident and that, since, the auto bearing Registration No. TN 07 BB 3828 was insured with the second respondent, both of them are jointly and severally liable to pay compensation to him.

3.The owner of the auto bearing Registration No. TN 07 BB 3828 is remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent Reliance General Insurance Company Limited, Chennai contested the claim petition. The learned VI Judge, Small Causes Court, Chennai after analysing the evidence on record, has awarded a compensation of Rs.1,33,627/- together with interest at the rate of 7.5% per annum to the appellant/claimant.

4.The Compensation awarded by the tribunal under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Loss of earning	Rs.15,000/-
2.	Transport to Hospital	Rs.4,000/-
3.	Extra nourishment	Rs.3,000/-
4.	Damage to clothes	Rs.1,000/-
5.	Damage to auto	Rs.25,627/-
6.	Pain and sufferings	Rs.25,000/-
7.	Disability at 30% at Rs.2,000/- per percentage	Rs.60,000/-
Total		Rs.1,33,627/-

5.Not satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant filed the present appeal under Section 173 of Motor Vehicles Act, 1988 seeking for enhancement of compensation.

6. Mr.S.Sanakaralingam, learned counsel appearing for the appellant would contend that the appellant/claimant is a driver cum owner of the auto rickshaw and he was aged about 38 years on the date of the accident. He was treated as an inpatient in Government Royappettah Hospital from 08.01.2011 to 20.01.2011 and implant was also fixed on his left knee. Dr.K.Mathiazhagan (PW2) has assessed the disability as 40%, the tribunal has taken only the disability as 30% and the tribunal has awarded

Rs.2,000/- per percentage towards the disability. The Tribunal has awarded a total sum of Rs.60,000/- (Rs.2,000/- x 30%) towards disability. He further contended that the disability fixed by the Tribunal is very meagre and no amounts were awarded under the heads 'medical expenses' and 'attender charges'.

7.The learned counsel for the appellant/claimant would submit that the injury suffered by the claimant are as follows:

"(i).Fracture of Left Knee (Petella)
(ii).Fracture both bones of Left Leg
(iii).Severe Head injuries
(iv).Serious injuries over face and right hand and other multiple injuries all over the body"

8.Per contra, Mr.K.Moorthy, learned counsel appearing for the second respondent strictly contended that the Tribunal has taken into consideration, various aspects and awarded compensation towards disability, which is just and fair and that the same need not be disturbed at this juncture.

9.The Tribunal awarded a sum of Rs.60,000/- towards the compensation for the disability of 30%. Considering the nature and severity of injuries sustained by the claimant, the compensation awarded by the Tribunal is very meagre. Therefore, it would be appropriate to award the compensation, after taking into consideration of the nature of injuries sustained by the injured. Infact, the injured also appeared before this Court. Even after 9 years of the accident, the injured is not able to walk properly. Therefore, the amount of compensation fixed by the Tribunal towards disability is too low and the same is refixed by this Court from a sum of Rs.60,000/- to Rs.1,00,000/-. The Tribunal was awarded a sum of Rs.15,000/- towards loss of earning. The amount awarded by the Tribunal towards loss of earning is very low. Therefore, this Court is inclined to increase the said amount to a sum of Rs.24,000/- (Rs.8,000/- x 3) for a period of three months.

10.In the present case, the injured needs to take medical treatment in future also. However, the Tribunal has failed to award any amount towards future medical expenses, this Court is inclined to award a sum of Rs.10,000/- towards future medical expenses. The Tribunal has failed to award any amount towards attender's charges, this Court is inclined to award a sum of Rs.5,000/- towards attender's charges.

11.With regard to all other heads, the Tribunal has fixed a sum of Rs.4,000/- towards transportation, Rs.3,000/- towards extra nourishment, Rs.1,000/- towards damage to clothes, Rs.25,627/- towards damage to auto and Rs.25,000/- towards pain and sufferings respectively are just and fair and the same are

confirmed by this Court. Thus, the revised compensation awarded by this court under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Loss of earning	Rs.24,000/-
2.	Transport to Hospital	Rs.4,000/-
3.	Extra nourishment	Rs.3,000/-
4.	Damage to clothes	Rs.1,000/-
5.	Damage to auto	Rs.25,627/-
6.	Pain and sufferings	Rs.25,000/-
7.	Disability	Rs.1,00,000/-
8.	Future Medical Expenses	Rs.10,000/-
9.	Attender's charges	Rs.5,000/-
Total		Rs.1,97,627/-

Thus, the appellant/claimant is entitled to a sum of Rs.1,97,627/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

12.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.1,33,627/- to Rs.1,97,627/-, 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, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv)The Reliance General Insurance Company Limited, is directed to deposit the entire amount awarded by this Court equally along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon.

vk

Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

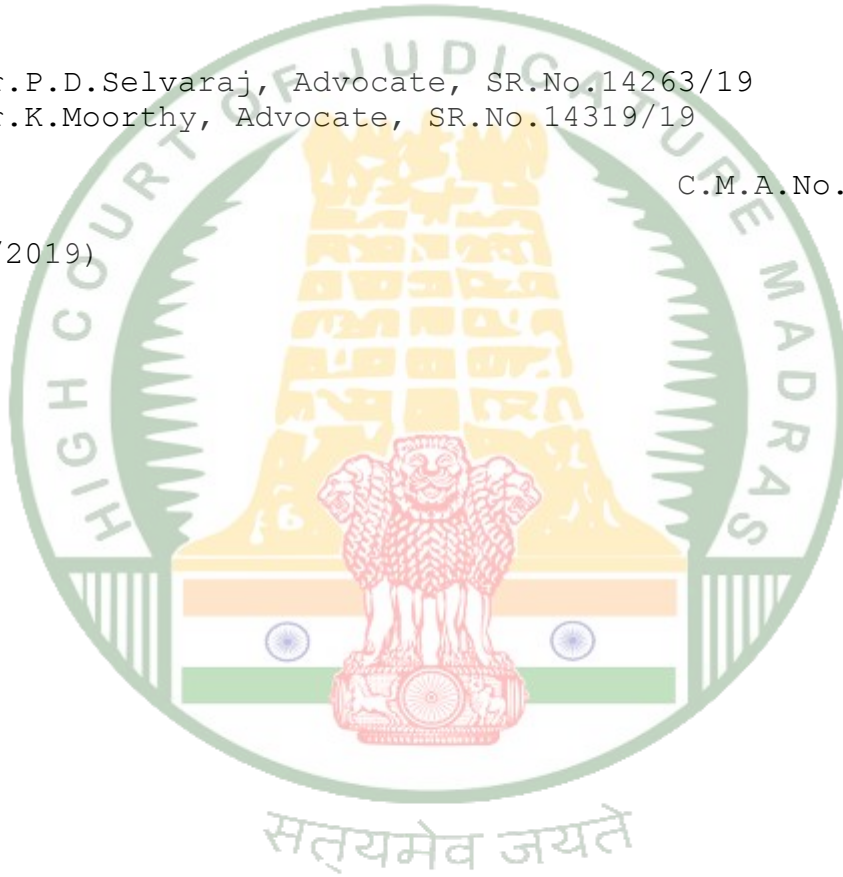
1. The Motor Accidents Claims Tribunal,
The VI Judge,
Small Causes Court,
Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras - 104.

+2cc to Mr.P.D.Selvaraj, Advocate, SR.No.14263/19
+1cc to Mr.K.Moorthy, Advocate, SR.No.14319/19

C.M.A.No.617 of 2013

Kak(14/06/2019)



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