

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.247 of 2014

Manikandan ...Appellant/Petitioner  
vs.

1.R.Gokula Manikandan

R1 remained exparte before the Tribunal, hence  
his presence may be dispense with

2.ICICI Lombard General Insurance Co. Ltd.,  
No.84 & 85, Arihant Plaza,  
Waltax road,  
Chennai - 600 003. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of  
the Motor Vehicles Act, 1988 against the decree and Judgment  
dated 12.04.2013 passed in MCOP.No.402 of 2011 on the file of  
the Motor Accident Claims Tribunal / IV Court of Small  
Causes, Chennai.

For Appellant : Mr.F.Terry Chellaraja

For Respondents : Mrs.R.Sreevidhya for R2  
No appearance for R1

J U D G M E N T

The appellant is the claimant in MCOP.No.402 of 2011  
on the file of the Motor Accident Claims Tribunal / IV 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.6,00,000/- for the injuries  
sustained by him in a road accident on 16.12.2008.

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

On 16.12.2008, the claimant was standing with his TVS  
50 motorcycle bearing Registration No.TNQ 8568 on Chennai -  
Trichy main road, near Anjaneyar Temple, Thirunavalur,  
Villupuram District and at about 15.30 hours, a speeding car  
bearing Registration No. TN 30 AA 6213 belonging to the first  
respondent and insured with the second respondent hit him, as  
a result of which, he sustained injuries all over his body.  
According to the claimant, the rash and negligent driving of

the driver of the car bearing Registration No. TN 30 AA 6213 was the cause of the accident and that since the said car was insured with ICICI Lombard General Insurance Company, the owner and the insurer are jointly and severally liable to pay compensation.

3. The owner of the car remained absent before the Tribunal and therefore he was set exparte. The second respondent / ICICI Lombard General Insurance Company contested the claim petition. The learned IV Judge, Court of Small Causes / Motor Accident Claims Tribunal, Chennai after analysing the evidence on record, awarded a compensation of Rs.1,18,000/- together with interest at the rate of 7.5% per annum to the 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.

4. Heard Mr.F.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.

5. Dr.J.R.R.Thiagarajan (PW2), has assessed the partial permanent disability as 45%. However, the Tribunal reduced the same to 40%. A perusal of records shows that the claimant had sustained fracture of both bones right ankle (lower end). Dr.J.R.R.Thiagarajan (PW2) has also deposed that the fractured bones are malunited and the claimant has got difficulty in walking fast and squatting. In the facts and circumstances, the partial permanent disability is taken up as 45%, as assessed by the doctor and a sum of Rs.2,000/- per percentage of disability is awarded. In the claim petition, the claimant has contended that he is a painter by profession, earning a sum of Rs.250/- per day. In the absence of any income proof, a sum of Rs.4,500/- is fixed as notional monthly income of the claimant, since the accident took place in the year 2008. As the claimant has suffered fracture of both bones right ankle (lower end), he would not have been in a position to attend to his routine work atleast for three 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.        | Partial permanent<br>disability | Rs.90,000/-                     |
| 2.        | Pain and sufferings             | Rs.20,000/-                     |
| 3.        | Transportation                  | Rs.5,000/-                      |
| 4.        | Extra nourishment               | Rs.5,000/-                      |

| S.No<br>. | Head               | Amount granted by<br>this Court |
|-----------|--------------------|---------------------------------|
| 5.        | Loss of income     | Rs.13,500/-                     |
| 6.        | Attender's charges | Rs.2,000/-                      |
| 7.        | Damage to clothes  | Rs.1,000/-                      |
| Total     |                    | Rs.1,36,500/-                   |

6. 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.1,18,000/- to Rs.1,36,500/-.

(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 / ICICI Lombard General Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.1,36,500/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of numbering the claim petition ie., 28.01.2011 till the date of deposit to the credit of MCOP.No.402 of 2011 on the file of the Motor Accident Claims Tribunal / IV 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-VI)

//True Copy//

Sub Assistant Registrar

mbi

To

The Motor Accidents Claims Tribunal,  
The IV Court of Small Causes,  
Chennai.

Copy To

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

+1cc to Mr.M.Malar, Advocate, S.R.No. 90791

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 91063

CMA.No.247 of 2014

SAI (CO)  
GN(11/03/2020)



WEB COPY