

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.680 of 2014

C.Nagaraj @ Nagalingam

... Appellant/Petitioner

Vs.

1. A. Rani  
(Remained absent and was set exparte before the tribunal)
2. The Reliance General Insurance Co. Ltd.,  
Regional Office (Legal Department),  
Reliance House, 6th floor,  
No.6, Haddows Road, Nungambakkam,  
Chennai 600 034. ... Respondents/Respondents

Prayer This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the quantum of compensation awarded in M.C.O.P.No.1115 of 2012 dated 25.09.2013 by the V Judge, Court of Small Causes, Chennai.

For Appellant : Mr. M.Swamikannu

For Respondent No.2: Mr. L.Ganesh  
R1 was set exparte before tribunal

J U D G M E N T

The appellant is the claimant in MCOP No.1115 of 2012 on the file of the V Judge, Court of Small Causes, Chennai. He filed the said claim petition seeking compensation of Rs.9,00,000/- for the injury sustained by him in a road accident that took place on 21.12.2011 at about 22.00 hours, when he was riding his motor cycle bearing registration No.TN-09-BA-4268 along Kodambakkam High Road. According to the appellant/claimant, a lorry bearing registration No.TN-09-V-1447, which came behind him, hit his motor cycle, as a result of which he sustained multiple injuries all over his body. His further contention is that, the rash and negligent driving of the driver of the lorry was the cause of accident and that since the owner of the lorry (first respondent) insured his lorry with the 2nd respondent, both of them are jointly and severally liable to pay compensation to the appellant/claimant.

2. The first respondent remained absent before the tribunal and therefore he was set exparte. The 2nd respondent contested the claim petition.

3. The V Judge, Court of Small Causes, after analysing the evidence on record, awarded a compensation of Rs.5,16,00/- with interest at 7.5% p.a. from the date of claim petition. Not satisfied with the quantum of compensation, the claimant has filed the present appeal for enhancement of compensation.

4. Mr.M.Swamikannu learned counsel appearing for the appellant/claimant contended that though Dr.Amarnath R.Sowlee (PW2) had assessed the partial permanent disability of the claimant as 40%, the tribunal without assigning any reason, had reduced the same to 35%. His further contention is that, the tribunal has also fixed the monthly income of the claimant as Rs.6,000/-, when in fact the appellant/claimant had indicated his monthly income as Rs.15,000/- to Rs.20,000/- in his claim petition. The specific contention of the learned counsel appearing for the appellant is that the petitioner is a plumber by profession and he can easily earn Rs.15,000 to 20,000 per month. It is also contended by him that the tribunal had awarded meagre amounts under the heads transportation and extra nourishment and the same have got to be enhanced.

5. Per contra, Mr.L.Ganesh, learned counsel appearing for the 2nd respondent contended that the appellant/claimant did not adduce any evidence to show that he was earning a sum of Rs.15,000 to Rs.20,000/- per month, as alleged by him and therefore, the tribunal was right in fixing the monthly income of the claimant as Rs.6,000/-. His further contention is that the tribunal has awarded exorbitant amount of Rs.1,50,000/- under the heads " pain and sufferings " and " Loss of Amenities ", which according to him should be scaled down.

6. A perusal of the records shows that the appellant/claimant had sustained a blunt injury in his abdomen with dislocation of left thumb IP joint. More over, the claimant had also sustained a burn injury in his abdomen, as a result of which, it is contended by Dr.Amarnath R.Sowlee PW2) that he cannot eat normal food.

7. The fact that the appellant/claimant was working as a plumber has not been seriously disputed by the 2nd respondent. Dr.Amarnath R.Sowlee (PW2) had also assessed the partial permanent disability of the claimant as 40% and the tribunal had reduced the same to 35%, without assigning any reason. The age of the claimant, on the date of accident was 41 years and therefore, proper multiplier to be adopted in the instant case is '13'. It is clear from the evidence on record that the claimant cannot do his plumbing work on account of

the accident and therefore, multiplier method has got to be adopted, as per the decision of a Division Bench of the Honourable Supreme Court in Rajkumar Vs. Ajay Kumar and another reported in 2011(1)SCC 343. Further more, it is also to be noted that the accident took place in the year 2011 and as a plumber, he could have easily earned a sum of Rs.7,500/- per month. In the facts and circumstances of the present case, the loss of earning capacity is calculated as (7500x 12x 13x 40%) Rs.4,68,000. The claimant could not have been attended to any other work on account of the accident atleast for 6 months and therefore, loss of income is calculated as 7500 x 6 = 45,000.

8. The compensation awarded under various heads by the tribunal and the enhanced compensation awarded by this court is extracted here under.

| Sl. NO. | Heads                 | Awarded by the Tribunal | Enhanced by this court       |
|---------|-----------------------|-------------------------|------------------------------|
| 1.      | Loss of Income        | 18,000<br>(3 x 6000)    | 45,000<br>(7500x6)           |
| 2       | Transportation        | 5,000                   | 10,000                       |
| 3       | Extra nourishment     | 5,000                   | 10,000                       |
| 4       | Damage to clothes     | 1,000                   | 1,000                        |
| 5       | Medical Expenses      | 5,000                   | 5,000                        |
| 6       | Attender charges      | 5,000                   | 5,000                        |
| 7       | Pain and suffering    | 75,000                  | 75,000                       |
| 8       | Loss of amenities     | 75,000                  | 75,000                       |
| 9       | Loss of earning power | 3,27,600                | 4,68,000<br>(7500x12x13x40%) |
|         | Total                 | 5,16,600                | 6,94,000                     |

This amount shall carry interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit.

9. In the result,

(i) The civil miscellaneous petition is partly allowed. No costs.

((ii) The quantum of compensation awarded by the tribunal is enhanced from Rs. 5,16,600 to Rs.6,94,000/-.

(iii) The second respondent is directed to deposit the enhanced compensation amount i.e. Rs.6,94,000/- (less the amount if any already deposited ) together with interest at the rate of 7.5% per annum from the date claim petition till

the date of deposit, within a period of four weeks from the date of receipt of a copy of this order.

(vi) On such deposit being made by the second respondent, the appellant/claimant is at liberty to withdraw the same after following due procedure of law.

Sd/-  
Assistant Registrar

//True copy//

Sub Assistant Registrar

mst

To

1.The V Judge, Court of Small Causes, Chennai.

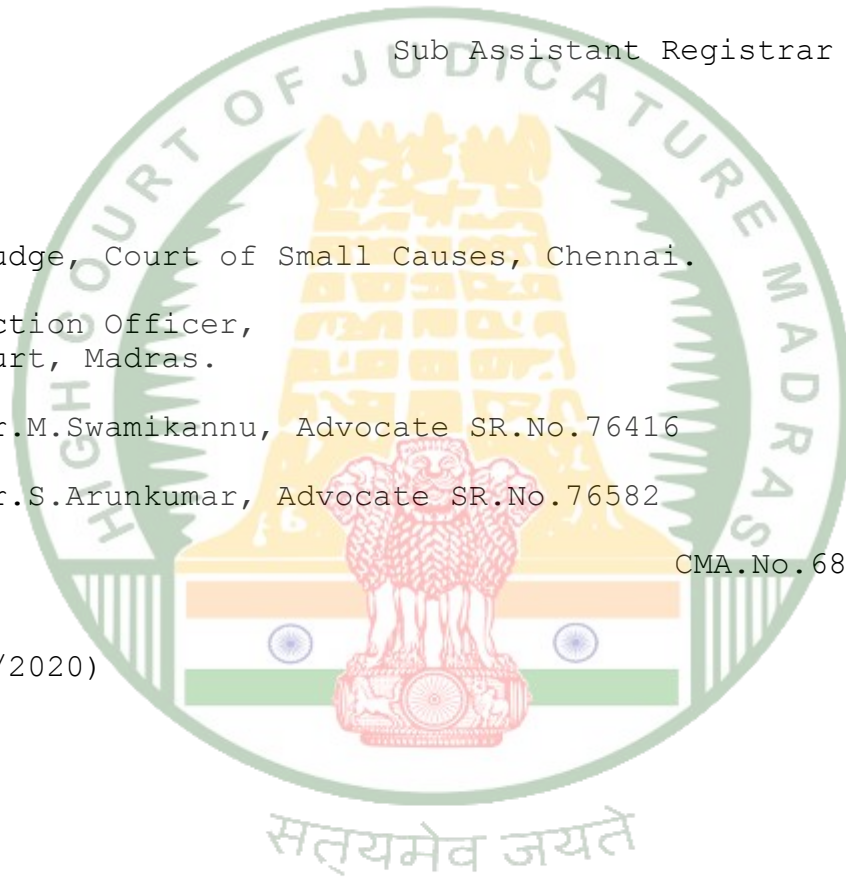
2. The Section Officer,  
High Court, Madras.

+1cc to Mr.M.Swamikannu, Advocate SR.No.76416

+1cc to Mr.S.Arunkumar, Advocate SR.No.76582

CMA.No.680 of 2014

LN(CO)  
GMY(10/02/2020)



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