

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.19 of 2017

S.Naveen Kumar

...Appellant/Petitioner

1.G.Balu

2.The Manager,

IFFCO-TOKIO General Insurance Co.Ltd.,
K.S.C.M.F.Building, 3rd Floor,
No.8, Cunningham Road,
Bangalore-560 052.

presently at

IFFCO-BHAWAN, 4th Floor,
No.128, Habibullah Road,
T.Nagar, Chennai-600 017.

Vs

... Respondents/Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 09.11.2016 made in MCOP No.3350 of 2013 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.A.A.Venkatesan

For Respondents: No appearance for R1

Mr.C.R.Krishnamurthy for R2

JUDGMENT

The case in brief, is as follows:

On 16.01.2013 at about 20.45 hours, the appellant-claimant was driving his motorcycle bearing Reg.No.TN-03-E-2560 along the Ennore Express Road, near Jogal Company, Thiruvottriyur, Chennai. At that time, another motorcycle bearing Reg.No.TN-24-Y-5257, belonging to the first respondent and insured with the second respondent Insurance Company, came from the opposite direction in a rash and negligent manner at great speed on the wrong side crossing the yellow line, and dashed against the motorcycle which the appellant was riding. Due to the said impact, the appellant - claimant was thrown out and sustained

grievous injuries. The appellant filed a claim petition before the Tribunal claiming a sum of Rs.10,00,000/- as total compensation. Considering the materials and evidence available on record, the Tribunal awarded a sum of Rs.1,30,000/- with interest at the rate of 7.5% per annum from the date of petition, as total compensation.

2.Challenging the same, the appellant-claimant has filed the present Civil Miscellaneous Appeal for enhancement of compensation.

3.The learned counsel for the appellant /claimant has submitted that the Tribunal has awarded meagre compensation towards various heads, without taking note of the materials and evidence adduced on record. He submitted that the Tribunal ought to have adopted the multiplier method in arriving at the compensation towards loss of income. Stating so, the learned counsel prayed for enhancement of compensation.

4.The learned counsel for the second respondent Insurance Company has submitted that the Tribunal has correctly considered the materials and evidence available on record and has correctly awarded the compensation, which is just, fair and reasonable and hence the judgment of the Tribunal does not require any interference in the hands of this Court.

5.Heard the learned counsel for the appellant / claimant and the learned counsel for the second respondent Insurance Company and perused the materials available on record carefully and meticulously.

6.The Tribunal has awarded a sum of Rs.75,000/- towards Disability considering the disability of 25% at the rate of Rs.3,000/- per percentage of disability. The Tribunal has also awarded a sum of Rs.25,000/- towards pain and suffering considering the nature of injuries sustained by the claimant, Rs.2,500/- each towards transportation expenses and extra nourishment, Rs.10,586/- towards medical expenses relying upon Ex.P15-Medical Bills, Rs.500/- towards damages to clothes, Rs.1,000/- towards attender charges, Rs.3,000/- towards future medical expenses considering the fact that there is every possibility to spend some more towards medical expenses in future, Rs.6,500/- towards loss of income during the treatment period and Rs.3,000/- towards loss of amenities, thus awarding a total compensation of Rs.1,29,856/-, rounded off to Rs.1,30,000/-.

7.Even though the Doctor fixed the disability at 40%, the Tribunal reduced the same to 25%. Considering the injuries suffered by the claimant, it would be appropriate to fix the

percentage of disability at 35%. Accordingly the amount awarded by the Tribunal towards Disability stands modified to Rs.1,05,000/- (Rs.3000/- x 35). Even though the claimant was treated as in-patient in the hospital from 16.01.2013 to 26.01.2013, considering the injuries suffered by the claimant, this Court is of the view that he would not have attended his work as Mechanic for a substantial period and hence it would be appropriate to award a sum of Rs.14,000/- towards loss of income during the treatment period. Further, awarding a sum of Rs.5,000/- each in addition to the amounts awarded by the Tribunal towards extra nourishment, attender charges and loss of amenities and a sum of Rs.500/- in addition to the amount awarded by the Tribunal towards damages to clothes, would meet the ends of justice. The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Disability	1,05,000/-
Pain and suffering	25,000/-
Extra nourishment	7,500/-
Transport to hospital	2,500/-
Damages to clothes	1,000/-
Attender charges	6,000/-
Medical expenses	10,856/-
Future medical expenses	3,000/-
Loss of income during the treatment period	14,000/-
Loss of amenities	8,000/-
TOTAL...	1,82,856/-

Thus, the appellant / claimant is entitled to the modified compensation of Rs.1,82,856, rounded off to Rs.1,83,000/-.

8.It is made clear that only for the compensation of Rs.1,30,000/-, the interest rate of 7.5% per annum shall be calculated from the date of claim petition. For the enhanced amount of Rs.53,000/-, the interest rate of 7.5% per annum shall be calculated from the date of filing of this appeal.

9.The Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs.

10.The second respondent Insurance Company is directed to deposit the modified compensation as ordered above, after deducting the amount if any already deposited, within a period

of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant / claimant shall withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

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

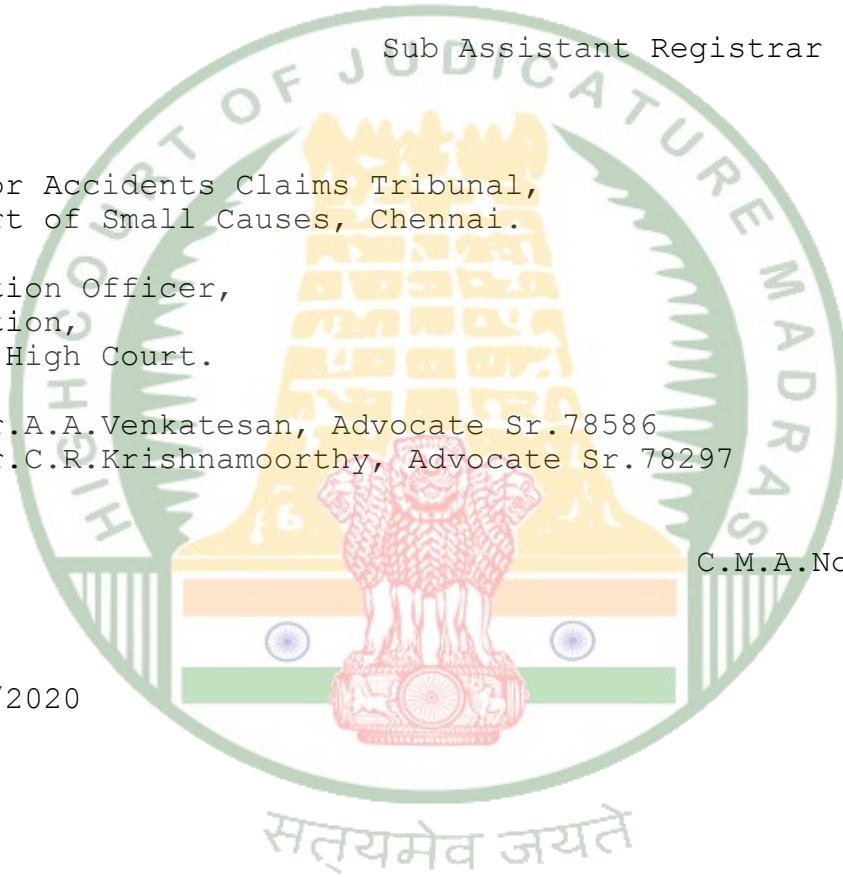
2.The Section Officer,
VR Section,
Madras High Court.

+lcc to Mr.A.A.Venkatesan, Advocate Sr.78586

+lcc to Mr.C.R.Krishnamoorthy, Advocate Sr.78297

C.M.A.No.19 of 2017

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srg 09/06/2020



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