

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.737 of 2017

Venkatesh ... Appellant/Petitioner

.. Vs ..

1.S.K.Srinivasan

2.The Manager,
National Insurance Company Limited,
Branch Office,
3rd Floor, Unity Building Annexure
No.72, Mission Road, P.B.No.2701,
Bangalore - 560 027. ... Respondents/Respondents

Appeal under Section 173 of the Motor Vehicles Act, 1988 to set aside the fair and decretal order dated 09.04.2009 passed in M.C.O.P. No.796 of 2006 by the learned Additional District Judge cum Motor Accidents Claims Tribunal, Dharmapuri.

For Appellant : Mr.M.Selvam

For Respondent-1 : No Appearance

For Respondent-2 : Mr.J.Chandran

JUDGMENT

The facts of the case, in brief, are as follows:

On 06.06.2006, the appellant / claimant boarded the bus bearing Reg.No.TN-29-H-7117 belonging to the first respondent and insured with the second respondent Insurance Company, to go to Hosur for his work. At about 08.00 a.m., when the bus was proceeding in between Thuppuganapalli - Uthanapalli and reached near Uthanapalli High School Road, due to the rash and negligent driving of the driver of the bus, the appellant /

claimant who was sitting in the back seat of the bus near the foot board, fell down on the foot board and consequently thrown out of the bus. Due to the impact, the appellant / claimant sustained fracture on his left leg and grievous injuries all over the body. The appellant filed a claim petition before the Tribunal claiming compensation for the injuries suffered. Considering the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.93,444/- with interest at the rate of 7.5% per annum from the date of petition.

2.Challenging the same, the appellant/claimant has filed the present appeal, for enhancement of compensation.

3.The learned counsel for the appellant / claimant has submitted that the compensation awarded by the Tribunal is on the lower side and is not in consonance with the injuries suffered by the appellant / claimant and hence the same needs substantial enhancement.

4.Per contra, the learned counsel for the second respondent / insurer submitted that the Tribunal, based on witnesses and documents, awarded the compensation; that the Tribunal has discussed in detail the evidence of Doctor, eye-witness as well as the documents produced by the claimant to arrive at the compensation, and hence the same does not require any interference.

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

6.The Tribunal has taken note of the evidence of PW-1 / Claimant as well as PW-2 / Doctor, who has stated that the claimant suffered fracture on his left leg and he is facing difficulty while squatting, walking, sitting and standing and ultimately he assessed the disability of the claimant at 40%, but the Tribunal reduced it to 20% on the ground that the claimant failed to take proper treatment and only because of the same, there was malunion of bones.

7.Before the Tribunal, the claimant has produced documents with regard to the injuries sustained by him, viz. Ex.P2-Wound Certificate and Ex.P7-Discharge Summary to show that he suffered disablement. Ex.P8-Medical Bills have been produced to show that medical expenses have been incurred by the claimant. Based on the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.93,444/- with interest at the rate of 7.5% per annum from the date of petition, without appropriate itemization. The Tribunal has awarded the compensation only under three heads.

According to Schedule-II of the Motor Vehicles Act and conventional methodology for the injury cases, the Tribunal ought to have awarded compensation under many heads. Considering the injuries suffered by the claimant, this Court is of the view that awarding an additional sum of Rs.1,25,000/- apart from the compensation of Rs.93,444/- awarded by the Tribunal, would meet the ends of justice.

8.The Tribunal has awarded a sum of Rs.43,444/- towards medical expenses, Rs.40,000/- towards permanent disability and Rs.10,000/- towards pain and suffering. This Court is of the considered view that it would be appropriate to award a sum of Rs.40,000/- towards loss of earnings, Rs.5,000/- towards transportation expenses, Rs.5,000/- towards extra nourishment, Rs.25,000/- towards future medical expenses and Rs.25,000/- towards loss of future earning power. It would also be appropriate to awarded a sum of Rs,25,000 towards pain and suffering, in addition to Rs.10,000/- awarded by the Tribunal.

9.The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Medical expenses	43,444/-
Permanent disability	40,000/-
Pain and suffering	35,000/-
Loss of earnings	40,000/-
Transport expenses	5,000/-
Extra nourishment	5,000/-
Future medical expenses	25,000/-
Loss of future earning power	25,000/-

TOTAL.....	2,18,444/-
	=====

Thus, the appellant / claimant is entitled to the modified compensation of Rs.2,18,444/-. It is made clear that only for the compensation of Rs.93,444/- awarded by the Tribunal, the interest rate of 7.5% per annum shall be calculated from the date of claim petition. For the enhanced amount of Rs.1,25,000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal. It is also made clear that the claimant has to pay the appropriate Court fee in order to receive the awarded amount.

10.In the result, the appeal is partly allowed. No costs. The second respondent / insurer is directed to deposit the modified amount of compensation, as ordered above, less the amount if any already deposited, within a period of four weeks

from the date of receipt of a copy of this judgment. On such deposit being made, the appellant / claimant is permitted to withdraw the same on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

drl/km

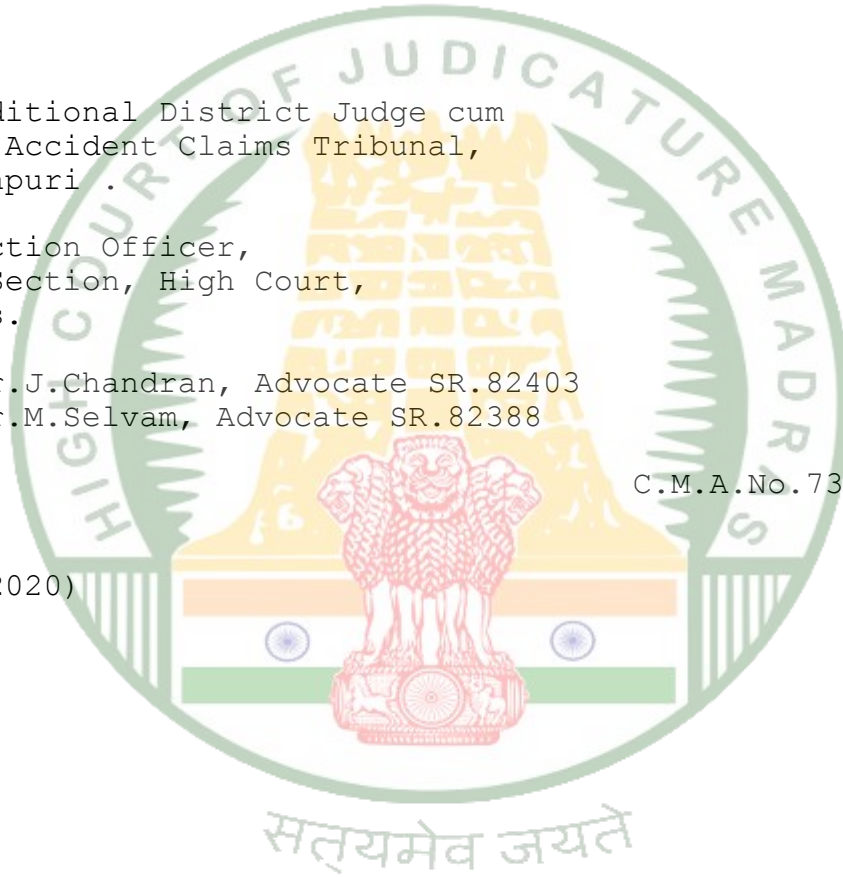
To

1. The Additional District Judge cum
Motor Accident Claims Tribunal,
Dharmapuri .
2. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.J.Chandran, Advocate SR.82403
+1cc to Mr.M.Selvam, Advocate SR.82388

C.M.A.No.737 of 2017

PP(CO)
CB(18/12/2020)



WEB COPY