

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1979 of 2013

Kalyanasundaram ... Appellant /Claimant

Versus

1.S.Yuvaraj
2. The National Insurance Co. Ltd.
C-32, II Avenue,
Thirumangalam,
Anna Nagar,
Chennai - 600 010. Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 21.12.2012 made in MCOP No.2300 of 2010 dated 21.12.2012 on the file of Motor Accident Claims Tribunal (V Small Causes Court), Chennai.

For Appellant : Mr.K.VaradhaKamaraj
For Respondents : Mr.D. Bhaskaran for R2
R1 - Served - No appearance

JUDGMENT

(This appeal was taken up for hearing through Video conferencing)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 21.12.2012 passed by the Motor Accidents Claims Tribunal, (V Small Causes Court), Chennai in MCOP No.2300 of 2010.

2. The appellant / claimant sustained injuries on 29.12.2009, while travelling as a pillion rider in a Motor cycle bearing Registration No.TN-20-BX-9883. The Two wheeler

in which the appellant / claimant was travelling as a pillion rider was hit by an unknown TATA ACE, which was coming from the opposite side causing injuries to the appellant / claimant.

3. The appellant / claimant preferred claim before the Motor Accidents Claims Tribunal (V Small Causes Court), Chennai under Section 163-A of the Motor Vehicles Act, 1988 against the owner and the Insurance Company of the Motorcycle.

4. The Motor Accidents Claims Tribunal by its award dated 21.12.2012 fixed the contributory negligence of the Appellant / claimant at 25% and directed the second respondent / Insurance Company to pay 75% of the total award amount of Rs.1,63,810/- i.e., amounting to Rs.1,22,855/- together with interests and costs to the appellant / claimant.

5. The details of the award passed by the Tribunal in favour of the claimant under Section 163-A of the Motor Vehicles Act as follows :-

Heads	Amount awarded by the Tribunal (Rs.)
Pecuniary loss by adopting the multiplier of 18 and disability to whole body of 15% 4000 x 12 x 18 x 15%	1,29,600
Loss of income	25,000
Medical expenses	4206
Pain and suffering	5,000
Total	1,63,806
R/off	1,63,810

6. The appellant / claimant unsatisfied with the quantum of compensation awarded by the Tribunal has preferred this appeal.

7. The appellant / claimant has challenged the award on the following grounds :

- The Tribunal ought not to have fixed 25% contributory negligence on the side of the appellant
- the compensation awarded by the Tribunal under various heads is not a just compensation.

8. Heard Mr.K.VaradhaKamaraj, learned counsel for the appellant and Mr.D.Bhaskaran, learned counsel for the second respondent. Despite service of notice on the first respondent, there is no appearance on his side.

9. This Court has perused the materials and evidence available on record before the Tribunal.

10. The second respondent / Insurance company has not preferred any appeal as against the impugned award and therefore, the findings given by the Tribunal against them has now attained finality. The contention that the appellant / claimant cannot be mulcted with 25% contributory negligence has been duly considered by the Tribunal under the impugned award. The Tribunal has taken note of the fact that in the said two wheeler three persons were travelling (though two persons are only permissible). The Tribunal has observed that when the two wheeler is designed only for two persons and when three persons travel, it is not only dangerous for those persons travelling in the said vehicle but also to others in the road. It has not been disputed by the appellant / claimant as seen from the evidence available on record that three persons were travelling in the motor cycle and one of them was the appellant / claimant. Only after take note of all these factors, the Tribunal has fixed the contributory negligence on the part of the appellant / claimant at 25%. This Court does not find any scope for interference with regard to the said finding given by the Tribunal.

11. Insofar as quantum of compensation awarded by the Tribunal is concerned, the Tribunal has assessed the monthly income of the appellant / claimant at Rs.4,000/- notionally, since no documentary evidence was produced by the appellant / claimant before the Tribunal. Under Section 163-A of the Motor Vehicles Act, the claimant can make a claim under the said provision only if his/her annual income is not more than Rs.40,000/-. Therefore, the fixation of Rs.4,000/- p.m. as the notional income for the appellant / claimant amounting to Rs.48,000/- annually, is not legally permissible under Section 163-A of the Motor Vehicles Act. Even in the pleadings, as found in the claim petition of the appellant / claimant, he has pleaded that as a Mechanic, he was earning only Rs.3,000/- p.m. The Tribunal ought not to have fixed the notional income at a higher sum than what was pleaded by the appellant / claimant in the claim petition. Therefore, this Court reduces the assessment of the monthly income of the appellant / claimant from Rs.4,000/- to Rs.3,000/-. The appellant / claimant is a Mechanic and his avocation has not been disputed by the second respondent / Insurance Company, as seen from the evidence

available on record. The appellant / claimant sustained fracture in the Left Femur and he was hospitalised for the period from 29.12.2009 to 04.01.2010; from 23.01.2010 to 26.01.2010 and from 01.02.2010 to 31.05.2010. An external fixation was also done on him and later on removed. The Doctor of the appellant / claimant who examined him (PW2) has fixed the appellant's / claimant's disability at 40%, as seen from the disability certificate (Ex.P10). The Tribunal after considering the nature of the injuries sustained by the appellant / claimant as well as the disability certificate (Ex.P10) has fixed the whole body disability of the appellant / claimant at 15% on its own.

12. This Court is of the considered view that after taking note of the fact that the appellant / claimant is a Mechanic and the nature of the injuries sustained by him as indicated earlier would have certainly prevented him from carrying on his normal work as a Mechanic for a considerable period of time, the fixation of the whole body disability at 15% by the Tribunal is low and it has to be enhanced to 20%.

13. Further, the Tribunal has also not awarded any compensation towards loss of future prospects to the appellant / claimant considering his avocation and the nature of injuries sustained by him in accordance with the decision of the Hon'ble Supreme Court in the case of the National Insurance Co. Ltd. vs. Pranay Sethi reported in 2017 16 SCC 680. Accordingly, this Court awards 40% towards loss of future prospects to the appellant / claimant. The age of the appellant / claimant is 26 years at the time of the accident and the Tribunal has rightly applied 18 multiplier while assessing the disability compensation. Thus, the loss of pecuniary loss by calculating the claimant's disability works out to Rs.1,81,440/- (Rs.3,000 + 40% x 12 x 18 x 20%)

14. The Tribunal has awarded a sum of Rs.25,000/- as loss of income to the appellant/claimant, which he is not entitled under Section 163-A of the Motor Vehicles Act which is a special provision and Schedule II of Act also does not permit such a compensation. Accordingly, the award of Rs.25,000/- as compensation towards loss of income to the appellant / claimant is rejected and is set aside by this Court.

15. Insofar as the other heads of compensation is concerned, there is no scope for interference by this Court as the compensation towards medical expenses and pain and suffering is a just compensation.

16. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is modified in the following manner

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Pecuniary loss by adopting the multiplier of 18 and disability to whole body of 15% *Rs.4000/- x 12 x 18 x 15% #Rs.3,000/- + 40% x 12 x 18 x 20%	1,29,600 *	1,81,440 #
Loss of income	25,000	- Rejected
Medical expenses	4,206	4,206
Pain and suffering	5,000	5,000
Total	1,63,806	1,90,646
Less 25% towards own negligence of the claimant	40,951	47,661
Award against the appellant	1,22,855	1,42,985

17. In the result, this appeal filed by the Appellant / claimant stands partly allowed by enhancing the compensation from 1,22,855/- (after deducting 25% from the total award amount) to Rs.1,42,985/-. No costs.

18. The second respondent / Insurance Company is directed to deposit the entire award amount awarded by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.2300 of 2010, on the file of the Motor Accidents Claims Tribunal, (V Small Causes Court), Chennai, within a period of four weeks from the

date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant /claimant, through RTGS, within a period of two weeks thereafter. The requisite Court fee, if any shall be paid by the appellant before receiving the copy of this Judgment.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vsi2

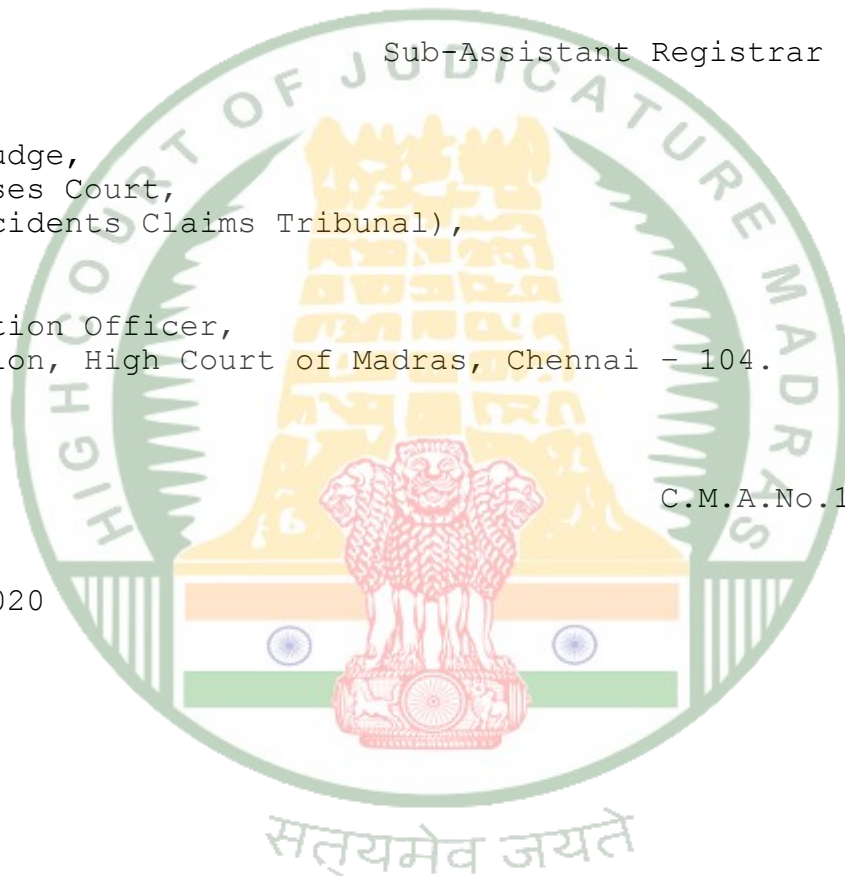
To

1.The V Judge,
Small Causes Court,
(Motor Accidents Claims Tribunal),
Chennai.

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

C.M.A.No.1979 of 2013

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