

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2164 of 2012

(Through Video Conferencing)

K.Vasanthraj ... Appellant /Petitioner

.vs.

1.Badhabhai Bhalabhai Sindhav
2.The New India Assurance Co., Ltd.,
No.45, Moore Street, V Floor,
Chennai 600 001.

(1st respondent set exparte before
the Trial Court)

.. Respondents /Respondents

Prayer.: This Civil Miscellaneous Appeal has been filed under
Section 173 of the Motor Vehicles Act, 1988 against the
Judgment and Decree dated 14.03.2012 made in
M.A.C.T.O.P.No.4121/2008 on the file of the Motor Accident
Claims Tribunal (VI Small Causes Court) Chennai.

For Appellant : Mr. N.Muthurajan
For R2 : Mr.J.Chandran

J U D G M E N T

The claimant is the appellant in this appeal. In this
appeal, the appellant has challenged the impugned judgement
and decree dated 14.03.2012 in M.C.O.P.No.4121 of 2008 passed
by the Motor Accident Claims Tribunal (VI Small Cause Court)
Chennai. The present appeal has been filed for enhancement
of the compensation awarded by the Tribunal.

2. By the impugned judgement and decree, the Tribunal
has awarded a sum of Rs.1,64,000/- as compensation payable to
the appellant as against the claim of Rs.10,00,000/-. In this
appeal, the appellant has restricted to claim for enhancement
of compensation to Rs 5 00,000/-.

3. The Tribunal has awarded the aforesaid sum of
compensation of Rs.1,64,000/- to the appellant under the
following heads:-

Pecuniary Loss:

- 1) Loss of Income for three months
at the rate of R.6000/- p. m. : Rs.18,000/-
- 2) Transportation : Rs. 5,000/-
- 3) Extranourishment : Rs. 5,000/-
- 4) Damage to clothes : Rs. 1,000/-

Non Pecuniary Loss :

5. Pain and suffering : Rs. 25,000/-
6. Disability of 55% at Rs.2000/-
per percentage : Rs.1,10,000/-

Total : Rs.1,64,000/-

4. The case of the appellant is that he sustained fracture of both bones in his left leg, fracture of right Maxilla and frontal bone and was treated as an inpatient for 11 days and thereafter conservatively with AK/publication. It is submitted that Ex.P.3-discharge summary issued by the Government Stanley Hospital shows that the appellant sustained Grade II Fracture of both bones in his left leg, Fracture of Maxilla, and structure of frontal bone.

5. The appellant submitted that he cannot walk fast, climb stairs and due to the head injuries he does not have a clear vision in his left eye during night hours. It is further submitted that PW3 has also deposed that the fracture of the bones were mal-united and therefore it was difficult for the appellant to sit cross legged for long time and that due to head injury suffered by him he often suffering from giddiness and that the fracture of maxilla resulted in difficulty chewing hard food substance. It is submitted that though PW3 has assessed the disability of the appellant as 60%, the Tribunal has considered the disability at 55% and has awarded only limited compensation of Rs.1,10,000/-. (i.e. R.55 x 2000)

6. It is submitted that the appellant was a carpenter and due to the injury suffered by there was a functional disability and therefore, the Tribunal ought to have awarded the amount claimed by the appellant as compensation.

7. I have heard the arguments of the learned counsel for the appellant and the 2nd respondent insurance company. There is no doubt that the appellant has not been fully disabled due to the injury suffered by him. The injury suffered by the appellant has not

resulted either in a permanent disability (PD) or permanent partial disability (PPD) impacting his earning capacity. However, there is a case made out for enhancement of compensation considering the nature of injury suffered by the appellant.

8. In my view, the Tribunal ought to have awarded just compensation to the appellant. The injury suffered by the appellant has not drastically compromised his earning capacity though it may have compromised the quality of life and put him out of work while he was recuperating. The Tribunal has assessed the disability at 55%. It has awarded the compensation for the same by adopting percentage basis Rs.2000 per percentage. Though the Tribunal has considered the income of the appellant as Rs.6,000/- p.m., it has awarded the compensation for the loss of income only three months. I am of the view that the income of the appellant can be considered as Rs.9,000/- p.m., as a carpenter is a skilled worker and he would have been out of action for about a year.

9. Accordingly, the compensation to be awarded to the appellant is partially enhanced and recomputed as follows:-

Sl.	Heads	Amount awarded by this Court
1	loss of income due for 12 months. (9000 x 12)	Rs.1,08,000/-
2	Transportation	Rs. 10,000/-
	Extra nourishment:	Rs. 10,000/-
	Damage to clothes and articles:	Rs. 1,000/-
	Pain and suffering	Rs. 25,000/-
	Towards injury suffered by the appellant/claimant (55x3,000)	Rs.1,65,000/-
	Total	Rs.3,19,000/-

10. The 2nd respondent Insurance Company is therefore directed to deposit the difference amount of Rs.1,55,000/- (3,19,000 - 1,64,000) together with interest at 7.5% per annum from the date of the claim petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment, less any amount already deposited, within the aforesaid period.

11. On such deposit, the appellant/claimant is permitted to withdraw the same together with interest accrued thereon, less any amount already withdrawn, by filing suitable application before the Tribunal.

12. The Civil Miscellaneous Appeal is partly allowed with the above observaion. No cost.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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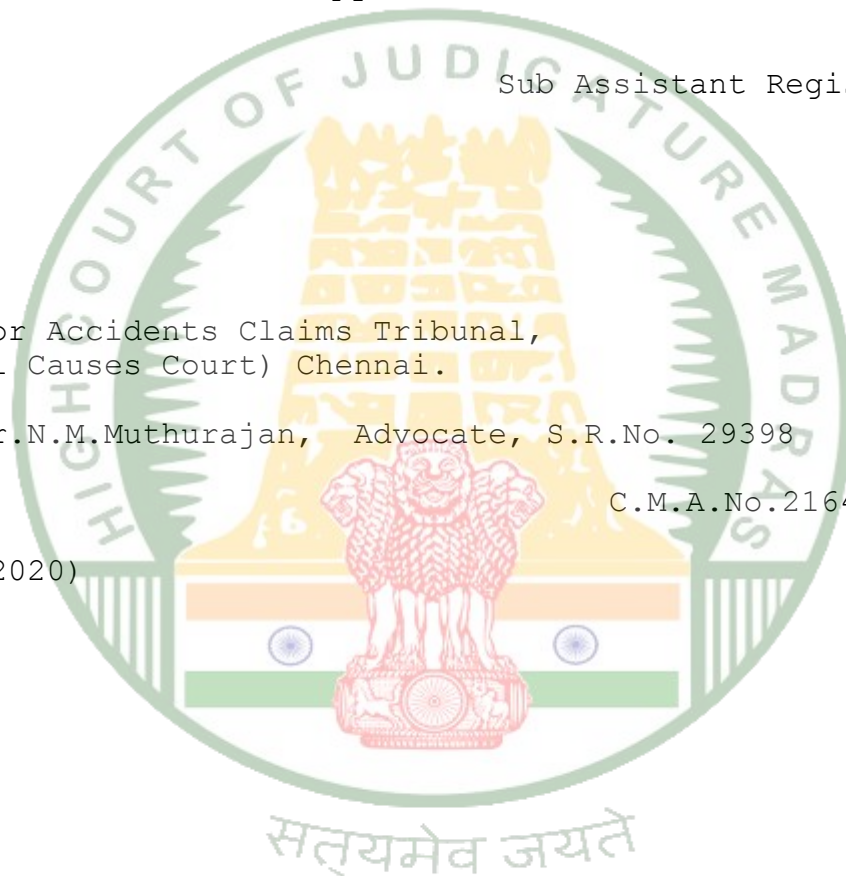
To

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

+1cc to Mr.N.M.Muthurajan, Advocate, S.R.No. 29398

C.M.A.No.2164 of 2012

LN(CO)
GN(06/11/2020)



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