

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2147 of 2013

ICICI Lombard General Insurance
Company Limited, 1st Floor
Arihand Plaza
No.84/85, Waltax Road
Chennai 600 003

... Appellant/2nd Respondent
Vs.

1.N.Durairaj1st respondent/Petitioner

2.G.Kuppu Rangan ...2nd Respondent/1st respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.10.2012 made in M.C.O.P.No.4835 of 2009 on the file of the Motor Accident Claims Tribunal (III Judge). I/c. II Judge, Court of Small Causes) at Chennai.

For Appellant : Mr.E.Rajadurai for
Mr.K.S.Narasimhan
For Respondents : Mr.C.Munuswamy for R1
R2- Exparte

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/Insurance Company against the quantum of award passed in the judgment and decree dated 12.10.2012 made in M.C.O.P.No.4835 of 2009 on the file of the Motor Accident Claims Tribunal (III Judge). I/c. II Judge, Court of Small Causes) at Chennai.

2.The appellant/Insurance Company is the Insurer of the alleged vehicle involved in the accident. The 1st respondent is the claimant and the 2nd respondent is the owner of the vehicle.

3.The case of the claimant is that on 21.12.2009 at about 08.30 hours, when the claimant was riding his motorcycle bearing Registration No.TN-22-AQ-1273 along the South Face Road, Guindy Industrial Estate from west to east direction with due care and diligence, the van bearing Regn.No.TN-20-AM-7467 came from the opposite direction and turned towards north in a rash and negligent manner without following the traffic rules and regulations and dashed against the claimant, thereby, the claimant sustained grievous injuries, for which the 1st respondent / owner of the vehicle, the 2nd respondent / insurer of the vehicle are jointly and severally liable to pay the compensation. Hence, he filed a claim petition before the Motor Accidents Claims Tribunal, Chennai, seeking Rs.7,00,000/- as compensation. The Tribunal after analyzing the materials available on record awarded a sum of Rs.6,92,000/- as compensation to the claimant along with interest at the rate of 7.5% from the date of petition till the date of realization.

4.Aggrieved over the quantum of award passed by the Tribunal, the appellant/Insurance Company has preferred this appeal to reduce the award amount as per the evidence let in by the claimant.

5.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal has erred in awarding a disproportionate and excessive compensation without following the Ruling of Apex Court reported in 2011 ACJ 1 Ajaykumar. The disability of 65% assessed by the P.W.2 is in respect of the injuries caused to the claimant is in accordance with schedule-I of E.C. Act and hence multiplier method cannot be adopted by the Tribunal. The claimant was working as an Executive Manager, and hence stiffness of left leg knee cannot have any impact on his earning capacity and when no such evidence was placed to establish the alleged loss of earning capacity the Tribunal ought not to have adopted multiplier method. In any event, the award passed by the Tribunal is on the higher side. Accordingly, prays for reducing down of the award passed by the Tribunal.

6.Per Contra, the learned counsel appearing for the 1st respondent/claimant submitted that the Tribunal has verified all the aspects and previous injury sustained by the claimant, awarded a just compensation, which is very low when compared to the injuries sustained by the claimant. The learned counsel further submitted that the claimant was working as a Manager in M/s.Vinay Enterprises, Balaji Nagar, Ekkattuthangal, Chennai and earning Rs.15,000/- per month and working from 1991 onwards. His work involves distribution of magazines to about 50 areas in Chennai city, collecting cash from the sub-agents and taking care of the entire office administration. The learned counsel also states that the claimant has small abrasions on the right

hand, abrasions below the right knee, right foot, 2 abrasion over the left foot, bit contusion and swelling on the left knee, abrasion and contusion of left knee. The petitioner was admitted for a period of 16 days to take treatment immediately after the accident thereafter, he was admitted for 6 days in Pallava Hospital. The claimant has sustained fracture over lateral tibial condyle with multiple ligament injury over left knee using BPTB and Hamstring graft was also done. However, the Tribunal has considered the same and awarded a reasonable amount of compensation, which needs no interference, accordingly, prays for dismissal of this appeal.

7. It is seen from the the award of the Tribunal that the learned Judge has verified Ex.P.1/ a copy of the Accident Register which reveals that a small abrasions on the right hand, abrasions below the right knee, right foot, 2 abrasion over the left foot, bit contusion and swelling on the left knee, abrasion and contusion of left knee. Ex.P2, a discharge summary, which says the claimant has sustained fracture over lateral tibial condyle with multiple ligament injury over left knee using BPTB and Hamstring graft was done. The disability of the person assessed by the Tribunal is 65% as the claimant was unable to move his left leg as the same was restricted and also the rotation and movement of the left leg restricted, but no materials were produced before this Court to show that the was permanently disabled to work and he cannot do any other work which he was doing earlier and he has simply stated that the claimant did not attend his work from 31.05.2010 and not paid salary from 01.01.2010 to 31.05.2010. The doctor has given a disability factor as 65% which is on the higher side.

8. On a perusal of the records with regard to quantum, the avocation and income of the injured in the claim petition has been stated that the claimant was working as a Manager in M/s.Vinay Enterprises, Balaji Nagar, Ekkattuthangal, Chennai and earning Rs.15,000/- per month and working from 1991 onwards. When the disablement as per the discharge summary is only a mild fracture and there were other ligament tear. This Court is of the opinion that some modification is required with regard to the quantum of award arrived by the Tribunal. Even though the disability is fixed at 65% which is on higher side, this Court in the absence of any other evidence let in by the learned counsel for the Appellant, disability is assessed as 60% and as such Rs.3,000/- per percentage is fixed and a sum of Rs.1,80,000/- has been awarded under the head of disability and loss of earning power. Regarding the loss of salary, he has not produced any materials to show that he was paid a salary of Rs.15,000/- per month. Hence, the awarded amount of Rs.45,000/-

under the head of loss of income for 3 months stands confirmed. As far as the compensation awarded under the heads Transportation Rs.5,000/-, Extra nourishment Rs.5,000/-, damage to clothes Rs.1,200/-, Medical expenses Rs.1,01,000/-, attender charges Rs.5,000/-, and loss of amenities & mental agony at Rs. 5,000/- are confirmed. The tribunal has awarded a sum of Rs.10,000/- under the head of pain and suffering which needs to be enhanced, accordingly Rs.20,000/- has been awarded under the head of pain and suffering.

9. Thus, the modified award amount is as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of income for 3 months	Rs.45,000/-	Rs.45,000/-
2.	Transportation	Rs.5,000/-	Rs.5,000/-
3.	Extra nourishment	Rs.5,000/-	Rs.5,000/-
4.	Damage to Clothes	Rs.1,200/-	Rs.1,200/-
5.	Medical Expenses	Rs.1,01,000/-	Rs.1,01,000/-
6.	Attender Charges	Rs.5,000/-	Rs.5,000/-
7.	Loss of Amenities & Mental agony	Rs.5,000/-	Rs.5,000/-
8.	Pain and suffering	Rs.10,000/-	Rs.20,000/-
9.	Disability and loss of earning power	Rs.5,14,800/-	Rs.1,80,000/-
	Total	Rs.6,92,000/-	Rs.3,67,200/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,92,000/- is hereby reduced to Rs.3,67,200/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. As per the interim order dated 28.06.2013 made in M.P.No.1 of 2013, if the entire amount was deposited by the appellant they are permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.4835 of 2009 on the file of the MACT (III Judge, I/C Judge) Court of small Causes at Chennai. The first Respondent/claimant is permitted

to withdraw only the reduced award amount along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected miscellaneous petition if any is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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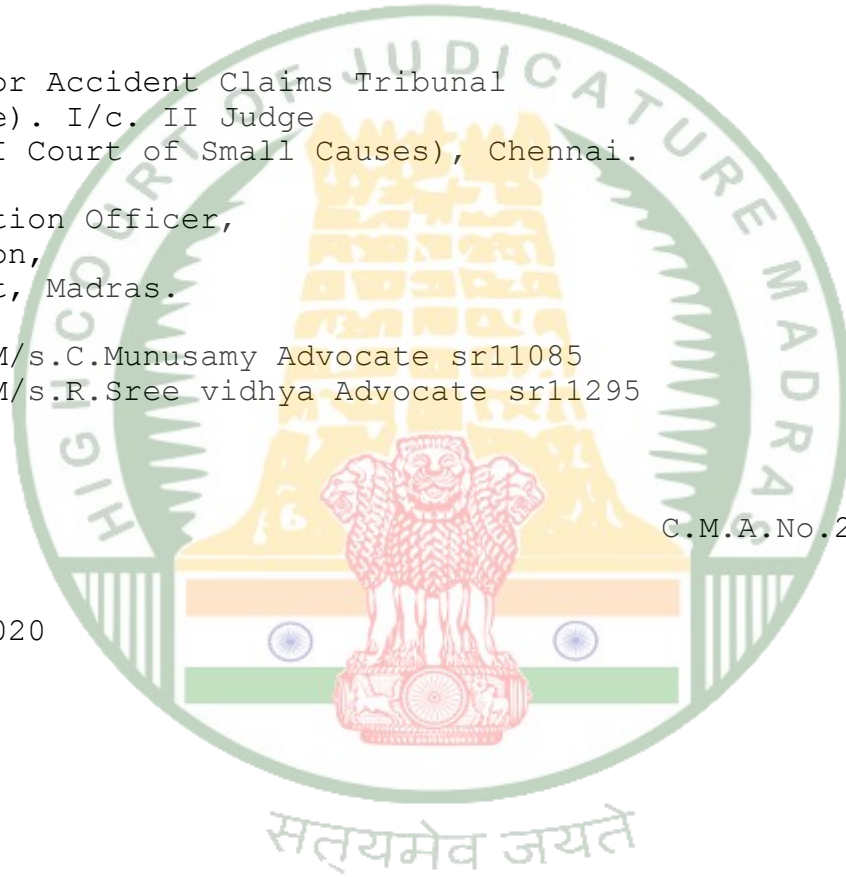
1.The Motor Accident Claims Tribunal
(III Judge). I/c. II Judge
(In the II Court of Small Causes), Chennai.

2.The Section Officer,
V.R Section,
High Court, Madras.

+1 cc to M/s.C.Munusamy Advocate sr11085
+1 cc to M/s.R.Sree vidhya Advocate sr11295

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