

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3284 of 2011
and
M.P.No.1 of 2011
(Through Video Conferencing)

The Divisional Manager,
The New India Assurance Co. Ltd.,
Having their office at Door No.42,
Big Street, Tiruvannamalai. ... Appellant/R2

Vs.

1.Arasu ... R1/Petitioner

2.K.Neppolian ... R2/R1
(The 2nd respondent herein remained
exparte before lower court)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree of the learned Motor Accidents Claims Tribunal (District Judge), Tiruvannamalai, made in M.A.C.O.P.No.1071 of 2009 dated 27.06.2011.

For Appellant : Mr.K.Mohan
For R1 : Mr.P.Mani
R2 : Exparte before the Tribunal

J U D G M E N T

Heard the learned counsel for the appellant and the 1st respondent.

2. The appellant Insurance Company is aggrieved by the impugned Judgment and Decree dated 27.06.2011 passed by the Motor Accident Claims Tribunal (In the Court of the District Judge, Tiruvannamalai), Tiruvannamalai, in M.C.O.P.No.1071 of 2009.

3. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.2,32,150/- together with interest at 7.5% per annum from the date of claim petition till the date of

deposit, to the 1st respondent for the following injuries:-

- i. Fracture at left knee & thigh
- ii. Fracture at left hand wrist injuries at jaws & loss of tooth.

4. In the claim petition, the 1st respondent had claimed a total compensation of Rs.5,00,000/-. After considering the evidence on record, the Tribunal has awarded the aforesaid compensation under the following heads:-

Permanent disability	: Rs. 1,72,800/-
Pain & Suffering	: Rs. 10,000/-
Medical Bills	: Rs. 36,000/-
Nutritious Food	: Rs. 5,000/-
Transport	: Rs. 2,850/-
Loss of Amenities	: Rs. 5,000/-
Loss of Cloths	: Rs. 500/-

Total	: Rs. 2,32,150/-

5. On behalf of the appellant Insurance Company it was submitted that while awarding the aforesaid compensation of Rs.2,32,150/-, the Tribunal erred in adopting multiplier.

6. On the other hand, the learned counsel for the 1st respondent submits that the impugned Judgment and Decree is well reasoned and therefore requires no interference. He has also filed a memo of calculation to justify the compensation awarded by the Tribunal and therefore submits that the calculation arrived by the Tribunal was correct. It is therefore prayed for dismissal of this appeal.

7. I have considered the arguments advanced by the learned counsel for the appellant and the 1st respondent. I have also perused the evidence on record and impugned Judgment and Decree passed by the Tribunal and also memo of calculation given by the learned counsel for the 1st respondent.

8. It is noticed that as per the decision of the Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar and Another, (2011) 1 SCC 343, the multiplier is adopted only in the permanent disability and in the case of permanent partial disability. In this case admittedly there is a permanent disability. The Court while awarding the compensation, has calculated the compensation for disability at Rs.1000/- per percentage. This was enhanced to Rs.2,000/- sometimes in 2007.

9. In the decisions of C.M.A.No.1470 of 2011 dated 07.12.2018 and C.M.A.No.1913 of 2017 dated 06.07.2017, this Court was pleased to award disablement compensation at the rate

of Rs.3,000/- for the accident occurred in the year 2019. Therefore, the learned counsel for 1st respondent submits that a sum Rs.1,20,000/- (40 x 3000) may be awarded towards permanent disability.

10. In Syed Sadiq Vs. United India Insurance Co.Ltd., (2014) 2 SCC 735, the Hon'ble Supreme Court was pleased to fix the notional income of a vegetable vendor at 6,500/- per month. It is stated that the 1st respondent sustained fractures at left knee & thigh fracture at left hand wrist and injuries at jaws & loss of tooth and therefore, he took treatment in three hospitals and underwent operation. Therefore, the learned counsel for the 1st respondent submits that loss of earning for four month at the rate of Rs.6,500/- per month comes to Rs.26,000/- (6,500 x 4).

Permanent disability (40 x 3,000)	: Rs.1,20,000/-
Pain and Sufferings	: Rs. 20,000/-
Loss of earning treatment (4 x 6,500)	: Rs. 26,000/-
Medical Bills	: Rs. 36,000/-
Extra Nourishment	: Rs. 10,000/-
Transport	: Rs. 5,000/-
Attender Charges	: Rs. 5,000/-
Loss of amenities	: Rs. 7,500/-
Damages of Cloths	: Rs. 5,00/-

Total	: Rs.2,30,000/-

11. Considering the fact that the injury had taken place in the year 2009, I find that the calculation given by learned counsel for the 1st respondent is reasonable.

12. Since there is no hardly difference between the calculation arrived by the Tribunal by applying multiplier and the calculation given by the learned counsel for the 1st respondent on the percentage basis, I am inclined to confirm the award in this Civil Miscellaneous Appeal.

13. Thus, if the appellant Insurance Company has not deposited the amount of compensation awarded by the Tribunal, it is directed to deposit the same [i.e., a sum of Rs.2,32,150/- (Rupees two lakhs thirty two thousand one hundred and fifty only)] together with interest at 7.5% per annum from the date of claim petition till the date of such deposit, less if any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

14. On such deposit, the 1st respondent/claimant is permitted to withdraw the same together with interest as directed by the Tribunal, less the amount already withdrawn if any, by filing suitable application before the Tribunal.

15. This Civil Miscellaneous Appeal is dismissed. No costs.
Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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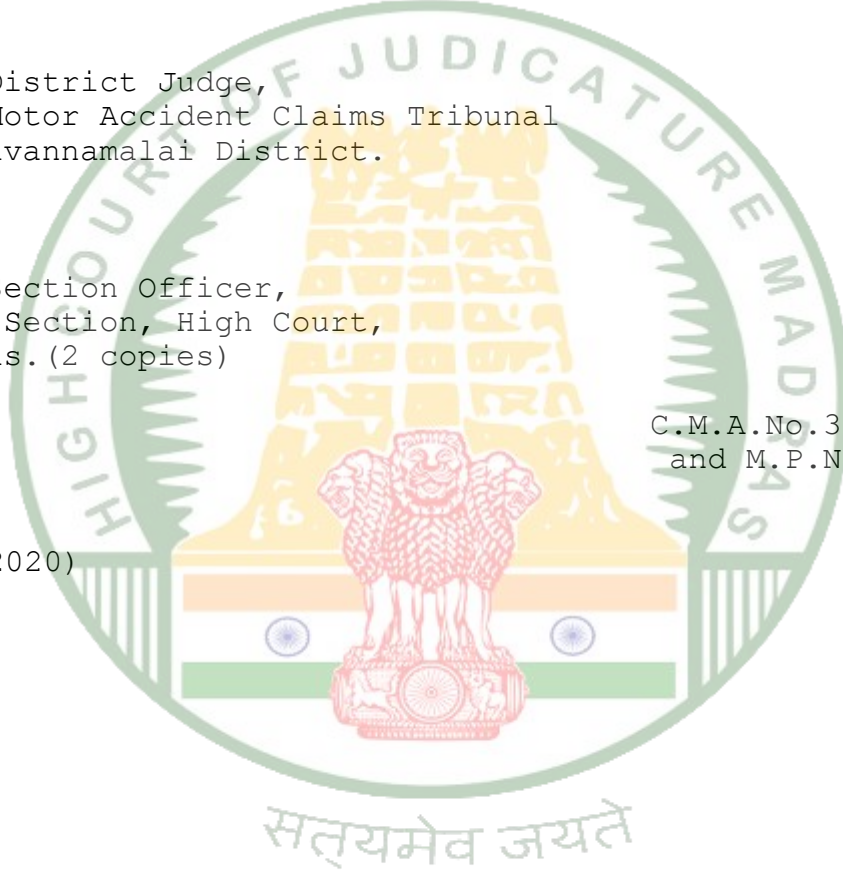
The District Judge,
The Motor Accident Claims Tribunal
Thiruvannamalai District.

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C.M.A.No.3284 of 2011
and M.P.No.1 of 2011

EV(CO)
GN(21/12/2020)



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