

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.NO.2518 OF 2012

(THROUGH VIDEO CONFERENCING)

K.Govindan ... Appellant/Petitioner

Vs.

1.Adikesavan

2.The Manager,
ICICI Lombard General Insurance Co. Ltd.,
Chennai. ... Respondents 1 & 2/
Respondents 1 & 2

Prayer:-

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 25.03.2010 made in M.A.C.T.O.P.No.152 of 2007 on the file of the Motor Accidents Claims Tribunal and Subordinate Judge, Cheyyar, Tiruvannamalai District.

For appellant : Mr.A.V.Arun

For 1st respondent : No appearance

For 2nd respondent : M/s.Poomalai

J U D G M E N T

The claimant is the appellant in this Civil Miscellaneous Appeal and is aggrieved by the impugned Judgment and Decree dated 25.03.2010 passed by the Motor Accidents Claims Tribunal, Cheyyar, Tiruvannamalai District, in M.A.C.T.O.P.No.152 of 2007.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.63,500/- as compensation together with interest at 7.5% p.a. from the date of the claim petition till the date of deposit as against the total claim amount of Rs.3,00,000/-.

3. While awarding the aforesaid compensation, the Tribunal has concluded that since the 1st respondent rider of the insured vehicle caused to the accident and since he possessed only a learner's licence, the 2nd respondent Insurance Company cannot be made liable to pay the compensation. Therefore, the 1st respondent rider and owner of the insured vehicle alone was liable to pay the compensation to the appellant.

4. The Tribunal has determined the compensation based on the evidence of P.W.2 Doctor and Exhibit P10. The nature of injury suffered by the appellant/claimant indicates an assessment of 25% partial permanent disability. Therefore by adopting Rs.1,500/- per percentage, the Tribunal has awarded a sum of Rs.37,500/- (25 x 1,500) towards disability and balance amounts under the conventional heads.

5. I have considered the learned counsel for the appellant and the 2nd respondent. There is no representation on behalf of the 1st respondent.

6. The Courts are justified in awarding the compensation applying the multiplier in terms of the decision of Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar and Another, (2011) 1 SCC 343.

7. In the present case, there is no dispute regarding the nature of injury suffered by the appellant/claimant. However, there is no evidence to substantiate the impact of the injury on the earning capacity of the appellant. The appellant/claimant ought to have produced medical records and evidence in the form of a testimony of a neurologist to substantiate the fact that the injury resulted in a functional disability impacting his earning capacity.

8. The injuries suffered by the appellant indicate that there was a fracture in the skull, injury on the left elbow, chin, left knee and grievous injuries in all over the body of the appellant. The P.W.2 Doctor has assessed that the appellant suffered short-term memory loss and was not capable of working for long hours or stand to carry on a work as a mason. However, there are no records to substantiate the same.

9. Since that has not been done, I am inclined to modify the compensation award on the percentage basis. Instead of applying the multiplier in absence of direct evidence from the appellant to substantiate the functional disability due to the injury, a sum of Rs.1,00,000/- is awarded towards injury at rate of Rs.4,000/- per percentage on 25% disability assessed.

10. Accordingly, the compensation awarded by the Tribunal is enhanced and re-quantified as follows:-

Heads and calculation	Re-quantified amount
Injury (25 x 4000)	Rs.1,00,000/-
Pain and Sufferings	Rs. 25,000/-
Attender Charges	Rs. 15,000/-
Transportation during the treatment	Rs. 10,000/-
Extra Nourishment	Rs. 7,500/-
Total	Rs.1,57,500/-

11. As per the decision of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd. Vs. Nanjappan and Others, (2004) 13 SCC 224, where there is a violation of policy conditions, the Insurance Company can be made liable to pay the compensation with liberty to recover the same from the owner of the vehicle.

12. In this case, since there is violation of policy conditions by the 1st respondent owner of the insured vehicle, the 2nd respondent Insurance Company is therefore directed to deposit the re-quantified amount of compensation of Rs.1,57,500/- together with interest at 7.5% from the date of claim petition till the date of deposit and costs, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

13. On such deposit, the appellant/claimant is permitted to withdraw the same together with interest and costs, less any amount already deposited, by filing suitable applications.

14. Liberty is given to the 2nd respondent Insurance Company to recover the same from the 1st respondent owner of insured vehicle in terms of the decision of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd. Vs. Nanjappan and Others, (2004) 13 SCC 224.

15. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No cost.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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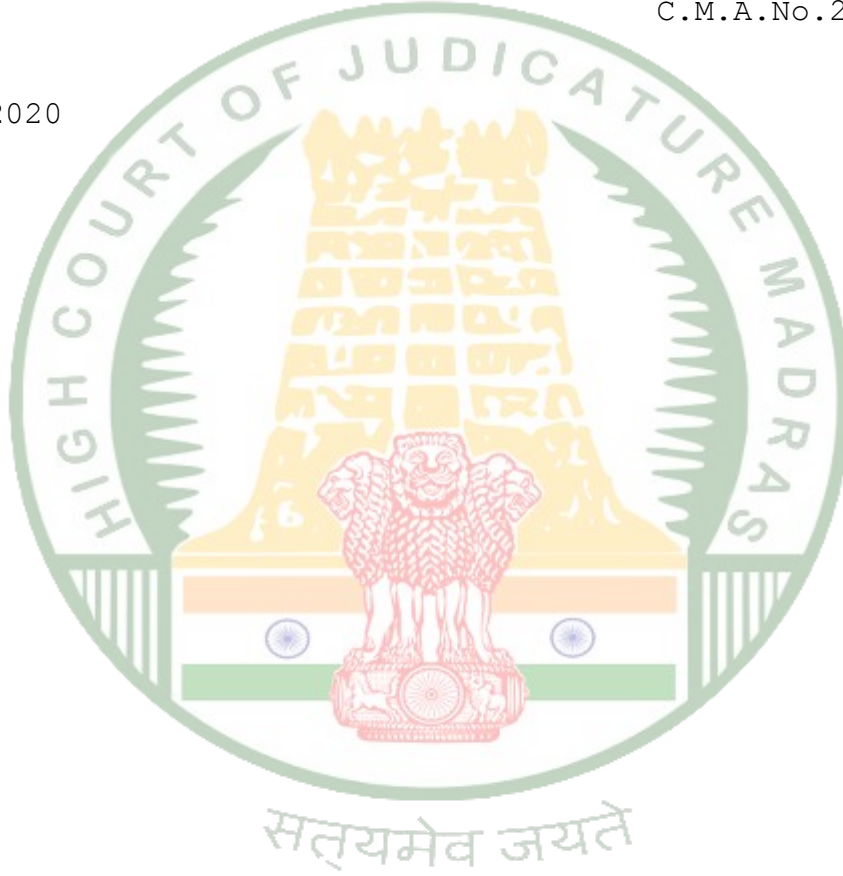
Motor Accidents Claims Tribunal and Subordinate Judge,
Cheyyar, Tiruvannamalai District.

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+1cc to Mr.A.V.Arun, Advocate, S.R.No.28373

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KJ(CO)
CS/11/12/2020



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