

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 01.12.2020  
CORAM:  
THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN  
C.M.A.No.1836 of 2015  
and  
M.P.No.1 of 2015

National Insurance Co.Ltd.,  
No.127, Aruvi Block, 1<sup>st</sup> Floor,  
Bharathiyar Salai,  
Thiruchirapalli-620 001.

...Appellant/2<sup>nd</sup> Respondent

versus

1.K.Govindarajan,  
S/o.Kuppusamy

2.M.Mohanraj,  
S/o.Narasimman

...Respondents/Petitioner/  
1<sup>st</sup> Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment made in M.A.C.T.O.P.No.5044 of 2011 on the file of the Motor Accidents Claims Tribunal (VI Judge, Court of Small Causes), Chennai dated 20.12.2013.

For Appellant : Mr.M.Krishnamoorthy  
For Respondents : Mr.K.Suryanarayanan for R1  
: Ex-parte for R2

J U D G M E N T

(The case has been heard through video conference)

This Civil Miscellaneous Appeal is filed by the Insurance Company being aggrieved by the fact that the Tribunal erred in awarding excessive compensation and the same has to be reduced.

2. Heard the learned counsel for the appellant/Insurance Company and the learned counsel for the first respondent.

3. The brief facts of the case is that on 03.06.2011, when the claimant was driving his TVS XL Super motorcycle bearing registration No.TN 02 AM 0607 along the Chennai to Tambaram bye pass Road near Thiruneermalai, another motorcycle bearing registration No.TN 45 AF 2250 proceeding in the same

direction rash and negligently hit the claimant and caused accident. In the said accident, the claimant sustained burst fracture of lumbar spine L1 and surgery was conducted to fix the plate and rod with bone grafting. Claim petition was filed before Motor Accidents Claims Tribunal, Chennai seeking compensation of Rs.6,00,000/-.

4. Claim petition was resisted by the Insurance Company on the ground that the accident occurred due to negligence of the claimant and the motorcycle alleged to have been involved in the accident not insured with the appellant/Insurance Company. The Tribunal on considering the evidence placed before it held that the FIR has been lodged against the rider of the motorcycle, which is insured under the appellant/Insurance Company, which indicates that the negligence was on the part of the offending vehicle and not on the part of the claimant. Therefore, claimant being a Clerk in a private firm, income of Rs.5,000/- has been fixed as his monthly income. Taking note of the disability certificate given by the doctor, the Tribunal has assessed the physical disability at 45% and functional disability at 25% for loss of earning capacity, applied multiplier and awarded a sum of Rs.3,00,000/-.

5. The learned counsel for the appellant/Insurance Company would submit that the claimant who is a retired Clerk in the private firm and he has not suffered any loss of earning capacity due to injury. The nature of injury is fracture in L1 bone, which has been restored after treatment. However the Tribunal unmindful of evidence placed before it had generously awarded a sum of Rs.1,05,000/- without any reason.

6. The learned counsel for the 1<sup>st</sup> respondent/claimant would submit that the entire compensation amount with interest has already been withdrawn by the claimant. When the matter was heard by another bench of this Court, as per oral direction of this Court, the appellant has re-deposited a sum of Rs.40,000/- in the account of MCOP on 27.11.2018. As far as the quantum of compensation is concerned, the learned counsel for the claimant would submit that the award of compensation under the head of disability and loss of earning capacity to be fair and justifiable considering the age of the accident victim and his avocation.

7. This Court, on considering the award given under various heads finds that the said award is high for the injury sustained by the claimant, without any basis. The Tribunal has awarded a sum of Rs.1,05,000/- apply multiplier for the loss of future earning capacity after awarding Rs.40,000/- for physical disability. When there is no evidence to show any impairment to his earning capacity, the Tribunal ought not to have awarded

anything in addition other than compensation for physical disability at the rate of Rs.2,000/- per percentage. The calculation for awarding the compensation has found in paragraph No. 23, which is extracted below:-

|    |                                                              |               |
|----|--------------------------------------------------------------|---------------|
| 1. | Loss of Income for 6 months                                  | Rs.30,000/-   |
| 2. | Transportation, Extra nourishment & Damage to clothes        | Rs.40,000/-   |
| 3. | Medical Expenses                                             | Rs.5,000/-    |
| 4. | Pain and sufferings                                          | Rs.40,000/-   |
| 5. | Disability of 45% at the rate of Rs.1000/- per percentage    | Rs.45,000/-   |
| 6. | Loss of amenities                                            | Rs.25,000/-   |
| 7. | Attender charges                                             | Rs.10,000/-   |
| 8. | Loss of future earning capacity (6000x12x25%x7 = 1,05,000/-) | Rs.1,05,000/- |
|    | Total compensation is fixed at                               | Rs.3,00,000/- |

8. This Court is of the view that though on all other heads the award is on higher side, the loss of future earning capacity appears to be duplicates to the compensation award under the head disability. The accident occurred on 03.06.2011, hence the compensation per percentage is awarded Rs.2,000/- instead of Rs.1,000/-. Award of Rs.1,05,000/- under the head of loss of future earning capacity is to be deleted. Therefore the award is modified as below:

| Sl. Nos. | Award under various heads                                 | Modified Award of this Court |
|----------|-----------------------------------------------------------|------------------------------|
| 1        | Loss of Income for 6 months                               | Rs.30,000/-                  |
| 2.       | Transportation, Extra nourishment & Damage to clothes     | Rs.40,000/-                  |
| 3.       | Medical Expenses                                          | Rs.5,000/-                   |
| 4.       | Pain and sufferings                                       | Rs.40,000/-                  |
| 5.       | Disability of 45% at the rate of Rs.2000/- per percentage | Rs.90,000/-                  |
| 6.       | Loss of amenities                                         | Rs.25,000/-                  |
| 7.       | Attender charges                                          | Rs.10,000/-                  |
|          | Total                                                     | Rs.2,40,000/-                |

9. The Appellant/Insurance Company is permitted to withdraw the amount deposited along with accrued interest on appropriate petition. Can proceed against the claimant for recovery of the balance amount.

10. With the above modification, the Civil Miscellaneous Appeal is partly Allowed. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rpl

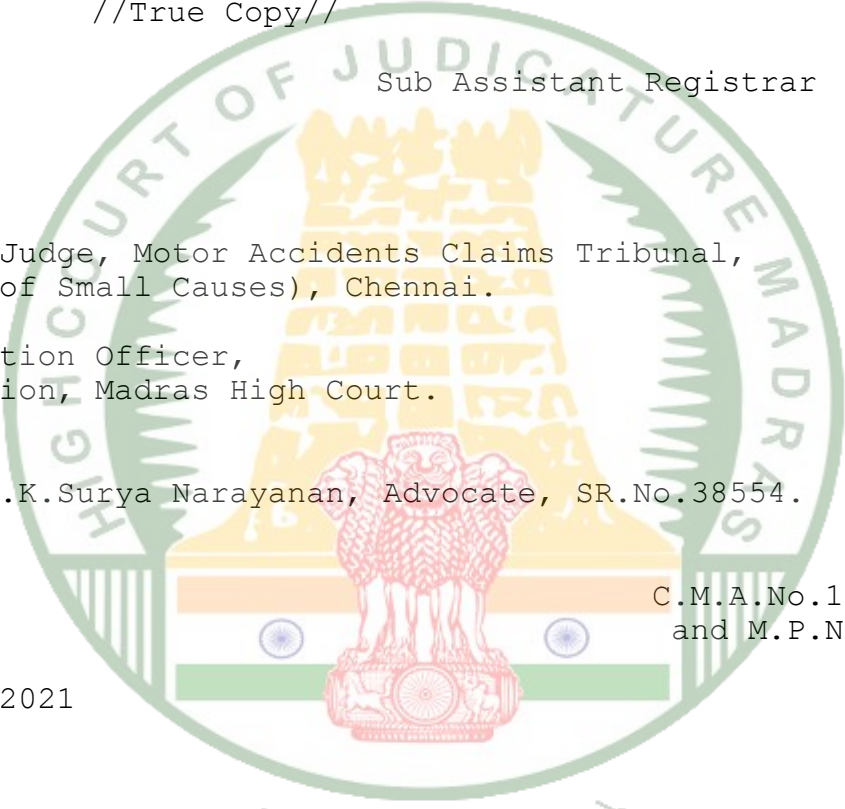
To

1. The VI Judge, Motor Accidents Claims Tribunal,  
(Court of Small Causes), Chennai.
2. The Section Officer,  
VR Section, Madras High Court.

+1cc to Mr.K.Surya Narayanan, Advocate, SR.No.38554.

C.M.A.No.1836 of 2015  
and M.P.No.1 of 2015

SR(CO)  
CSR 21.04.2021



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