

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.02.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.773 of 2017

Rajkumar

...Appellant /Petitioner

Vs

1.Lilly Ranganathan

2.The New India Assurance Co. Ltd.,
No.45, 2nd Line Beach, 5th Floor,
Moore Street, Chennai-1.

...Respondents/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.06.2008 made in M.C.O.P.No.560 of 2003 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : M/s.Ramya V.Rao

For Respondents : Ms.A.Salomi for R2
R1-Dispensed with

J U D G M E N T

The appellant herein is the claimant before the accident Tribunal. Not being satisfied with the quantum of compensation awarded, the present appeal is filed for enhancement.

2. The brief facts of the case is that on 20.12.2012, the claimant about 17 years old, as a Cleaner in a lorry, was travelling in the lorry bearing Registration No.TDL 7812. The lorry driver due to his rash driving lost his control and fell away from the road. The claimant travelling in the lorry as Cleaner sustained grievous injury. His left foot got amputated. Claiming compensation of Rs.10,00,000/-, petition was filed. The same was resisted by the Insurance Company on the ground that the lorry was not duly insured under them. Lorry driver had no effective driving license. Since the accident occurred

due to the negligence of the lorry driver, the Insurance Company is not liable to compensate the claimant.

3. The Tribunal after considering the F.I.R which speaks about the accident, the disability certificate which discloses injuries and percentage of disability and the medical records held that the claimant is entitled for a total sum of Rs.1,28,000/- as under:-

Rs.30,000/- towards permanent disability; Rs.48,000/- towards loss of earning; Rs.30,000/- for pain and suffering; Rs.5,000/- each for Extra Nourishment, Medical Expenses and transport and Rs.5,000/- for Medical Attendance.

4. In the appeal, the claimant has stated that the quantum of compensation awarded is inadequate, unfair and not just. In the accident, the claimant suffered severe crush injury in the left foot, fracture of five bones in the left foot. He was treated as inpatient at Government General Hospital from 20.12.2002 to 01.02.2003. He has undergone surgical treatment. Due to gangrene formation, a portion of the foot was amputated. Being a Cleaner in the lorry, the said amputation has taken away his earning capacity. Whiles, the compensation awarded by the Tribunal does not commensurate the nature of injury and disability.

5. Learned counsel for the respondent/Insurance Company submitted that at the time of accident, the claimant was hardly 16 years old. He had no job or income of his own. The alleged amputation of left foot was not due to the accident injury but due to the lapse in the after treatment care. Hence, the award of the Tribunal need not be interfered.

6. The claim petition is filed under Section 163A of the Motor Vehicles Act. Evidence indicates that in the said accident, as a consequences of the accident injury, left foot of the claimant has been amputated. As per the W.C. Act, the disability for such amputation shall be 50%. Being a total permanent disability, the percentage of disability is taken as percentage of functional disability. Since the petition is filed under Section 163A, the computation of compensation shall be as per the structured formula. At the time of accident, the claimant was around 16 years. Assuming that his notional income as Rs.40,000/- per annum, the loss of earning power is computed as Rs.3,60,000 ($40,000 \times 18 \times 50 / 100$). Accordingly, the award of the Tribunal is enhanced as below:

Compensation under Various Heads	Award passed by this Court
Loss of Earning Capacity due to 50% disability (40,000X18X50/100)	Rs.3,60,000/-
Loss of income during the treatment period (3300X6)	Rs. 19,800/-
Pain and Suffering	Rs. 5,000/-
Medical Expenses	Rs. 2,000/-
Total	Rs.3,86,800/-

7. Accordingly, the award is enhanced from Rs.1,28,000/- to Rs.3,86,800/-. The respondent insurance Company shall be liable to pay the said amount with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation (excluding the interest for a period of 300 days delay in filing the appeal). The said amount shall be deposited in the MCOP No.560 of 2003 Account within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the same on appropriate application.

8. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-
Asst.Registrar (CS I)

/true copy/
Sub Asst. Registrar

vri

To
The Motor Accidents Claims Tribunal
VI Court of Small Causes,
Chennai.

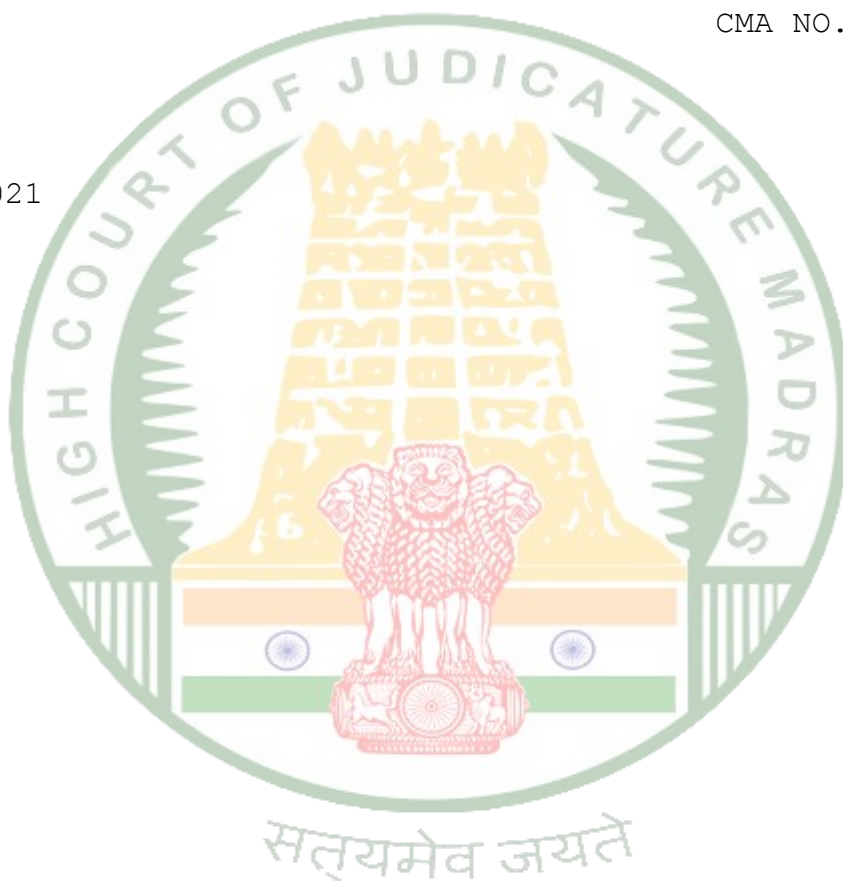
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