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C.M.A.Nos.736 and 748 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04-02-2025**

CORAM

THE HONOURABLE MR JUSTICE R. SURESH KUMAR

AND

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

CMA NO. 736 of 2007 AND

CMA NO. 748 OF 2007

CMA No.736 of 2007

N.Suresh

.... Appellant

Vs

1. V.Murthy

Othavadi Street, Reddypalayam Village, Kattukkanur
Post, Arni Taluk, Thiruvannamalai Dist. (Was Set Ex-
parte in the Trial Court).

2.New India Assurance Co.Ltd.,

Motor Third Party Claims Cell, No.45, Moore Street,
Chennai-1.

.... Respondents

Prayer : Appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 10.11.2006 made in M.A.C.T.O.P.No.3640 of 2002 on the file of the V Judge, Motor Accidents Claims Tribunal (Court of Small Causes, Chennai).

CMA NO. 748 of 2007

The New India

Assurance Company Ltd Motor Third Party Claims Cell
No 46 Moore Street Chennai- 1.

.... Appellant



C.M.A.Nos.736 and 748 of 2007

Vs

1. N Suresh

S/o. P Natasrajan Reddipalayam Village Kattukannur
Post Arni Tk Tiruvannamalai Tk.

2. V.Murthy

Othavadi Street, Reddypalayam Village, Kattukkanur
Post, Arni Taluk, Thiruvannamalai Dist. (Was Set Ex-
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.... Respondents

Prayer : Appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 10.11.2006 made in M.A.C.T.O.P.No.3640 of 2002 on the file of the V Judge, Motor Accidents Claims Tribunal (Court of Small Causes, Chennai).

CMA NO. 736 of 2007

For Appellant : M/s.Saleem Fathima
For Respondents : R1 - Exparte
M/s.S.Dhakshnamoorthy For R2

CMA NO. 748 of 2007

For Appellant : M/s.S.Dhakshnamoorthy
For Respondents : M/s. Saleem Fathima – for R1
R2 - Exparte

J U D G M E N T

(Judgment of the Court was delivered by **R.Suresh Kumar, J.**)

The appellant in C.M.A.No.736 of 2007 is the claimant. On 16.01.2002, when he was working as a cleaner in the lorry bearing Registration No.TN-25-Z-7975,



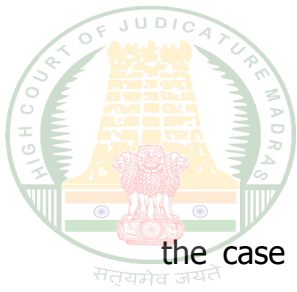
C.M.A.Nos.736 and 748 of 2007

when he attempted to lift the over head electric wire, he suffered electric shock, due to which his both hands were burnt. Resultantly, his hands were amputated. He had taken medical treatment and had approached the Tribunal seeking for compensation for a sum of Rs.99,00,000/-.

2. The Motor Accidents Claims Tribunal ie., the V Court of Small Causes at Chennai vide award dated 10.11.2006 made in M.C.O.P.No.3640 of 2002 has passed an award, allowing a total compensation of Rs.9,50,000/- with 7.5% interest. Since it was felt inadequate on the part of the claimant, he filed the present C.M.A.No.736 of 2007. However, the same was dismissed by order dated 21.03.2007 at the admission stage by a Division Bench of this Court.

3. As against the said order passed by the Division Bench dated 21.03.2007, the claimant / appellant preferred Special Leave Petition in S.L.P.No.14060 of 2007, which was converted as Civil Appeal No.8640 of 2013 and was disposed by the Hon'ble Supreme Court vide its order dated 24.09.2013 along with similar appeals.

4. In the said order, the Hon'ble Supreme Court, having set aside the order passed by the Division Bench in C.M.A.No.736 of 2007 filed by the claimant, remanded the matter back to this Court for reconsideration and to decide the issue afresh by keeping in view the observation made by the Hon'ble Supreme Court in



C.M.A.Nos.736 and 748 of 2007

the case reported in **K.Suresh -vs- New India Assurance Company Limited**

and **Another** reported in **(2012) 12 SCC 274**. Pursuant to the said remand order,

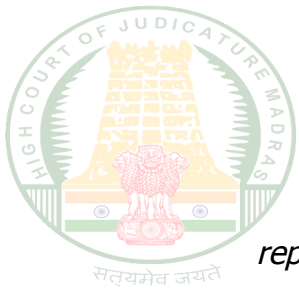
the said appeal ie., C.M.A.No.736 of 2007 got restored to the file of this Court.

5. In the meanwhile, the respondent insurance company has filed an appeal against the very same order of the Tribunal in C.M.A.No.748 of 2007, which appeal also has been clubbed along with C.M.A.No.736 of 2007, thereby, both the appeals were heard together and disposed of by this common judgment.

6. In the appeal filed by the claimant in C.M.A.No.736 of 2007, the Tribunal through the impugned order has allowed a sum of Rs.8,50,000/- only under one head ie., loss of earning capacity by taking into account the disability of 100%, and has not taken into account the loss of future earnings for awarding the compensation, which in fact has been pointed out by the Hon'ble Supreme Court in the said judgment in Civil Appeal No.8640 of 2013.

7. In order to have an easy reference, the relevant portion of the order of the Hon'ble Supreme Court is extracted hereunder:

" 2. *Learned counsel appearing for the appellant / claimant brings to our notice a judgment of this Court in the case of K.Suresh Vs. New India Assurance Company Limited & Anr.,*



C.M.A.Nos.736 and 748 of 2007

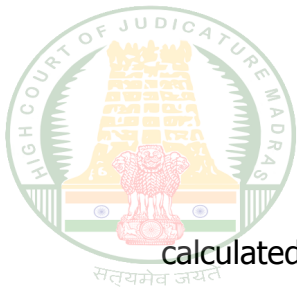
reported in (2012) 12 SCC 274. In the said decision, this Court has categorically held that the compensation can be payable both for loss of earning capacity as well as disability suffered by the claimant.

3. In our considered opinion, the view taken by the High Court is contrary to the observations made by this Court in the case of K.Suresh (supra). In view of the above, the impugned judgment and order passed by the High Court cannot be sustained and the same is liable to be set aside.

4. Accordingly, we allow this appeal and set aside the impugned judgment and order passed by the High Court. We remand the matter back to the High Court to consider and decide the appeal filed by the appellant / claimant keeping in view the observations made by this Court in the case of K.Suresh (supra)."

8. Therefore, a directive has been issued by the Hon'ble Supreme Court in the said order that the matter was remanded back to the High Court to consider and decide the appeal filed by the appellant / claimant, keeping in view the observation made by the Supreme Court in the case of **K.Suresh** cited supra.

9. In the said case of **K.Suresh -vs- New India Assurance and another** cited supra, the Hon'ble Supreme Court has categorically held that the compensation is payable for both loss of earning capacity as well as disability suffered by the claimant. Therefore, under these two heads since compensation have to be



C.M.A.Nos.736 and 748 of 2007

calculated and be awarded by the Tribunal, which the Tribunal has failed in the judgment which is impugned herein, such a remand was required and therefore, as per the said remand order passed by the Hon'ble Supreme Court, we have to dispose the appeal in C.M.A.No.736 of 2007 by taking into account all the relevant factors ie., the age of the claimant, percentage of disability, the relevant multiplier by taking into account the monthly salary fixed by this Court at Rs.2,000/- per month.

10. As the Tribunal has already fixed a lump sum compensation of Rs.8,50,000/- under the head loss of earning capacity and no amount has been awarded towards loss of future earnings due to permanent disability, which in the present case is 100% in the earlier order dated 21.03.2007, we are inclined to interfere with the same by taking the loss of future earnings of the claimant due to 100% disability at the rate of Rs.2000/- per month by adopting the multiplier of 18. Therefore, based on the aforesaid calculation, the total compensation of Rs.9,50,000/- awarded by the Tribunal is modified into the following amounts:

Headings	Amount of compensation (in Rs.)
1) Loss of earning capacity	8,50,000
2) Loss of future earnings due to permanent disability @ 100% (Rs.2000X 12X18)	4,32,000
3) Loss of Dependency	25,000
4) Transport Charges	5,000



Headings	Amount of compensation (in Rs.)
5) Nutrition	5,000
6) Pain and Suffering	30,000
7) Loss of marital prospects	25,000
8) Loss of participation in social functions	10,000
Total	13,82,000

12. Insofar as the dependency is concerned, a sum of Rs.25,000/- has already been awarded by the Tribunal, which the learned counsel for the claimant seeks enhancement. But, we do not propose to make enhancement of the amount awarded under the said head.

13. Insofar as medical expenses are concerned, though it has been stated by the claimant before the Tribunal that he had to take continuous medical treatment for a while, since there has been no documents or bills produced before the Tribunal, on that head, no compensation was allowed and we also do not propose to interfere with the same.

14. With regard to appeal in C.M.A.No.748 of 2007 filed by the Insurance Company is concerned, though the learned counsel appearing for the Insurance Company has raised the point of liability of the Insurance Company to pay the compensation by stating that the vehicle viz., the lorry said to have been involved in this accident was not at all the actual vehicle and some other vehicle since has been



C.M.A.Nos.736 and 748 of 2007

involved in the alleged accident, the appellant Insurance Company in that appeal is

not liable to pay any compensation.

15. We are not impressed with the said submission made by the learned counsel for the Insurance Company for the reason that, the Insurance Company is also one of the parties in C.M.A.No.736 of 2007 filed by the appellant/claimant. As against the order passed by the Division Bench dismissing the appeal by order dated 21.03.2007, when Special Leave Petition was filed by the appellant/claimant in C.A.No.8640 of 2013 and when the same was disposed of by the Hon'ble Supreme Court since the Insurance Company is also one of the parties in the Civil Appeal No.8640 of 2013, those points including the point of liability to pay the compensation by the Insurance Company could have been raised. Whether they have raised it or not or they failed to raise it, is not at all the matter to be gone into by this Court at this juncture, as when the Civil Appeal was disposed of by the Hon'ble Supreme Court vide its order dated 24.09.2013, where the appeal has been remanded back to this Court for re-hearing and disposal by keeping in mind the observation made by the Hon'ble Supreme Court in **K.Suresh -vs- New India Assurance and another** cited supra, which we have discussed herein above. It is also to be noted that the Tribunal also in the judgment impugned has considered the point of liability also raised on behalf of the Insurance Company and having gone through the said reasoning given by the Tribunal, we do not think any reason is available for us to interfere with the said finding given by the Tribunal.



C.M.A.Nos.736 and 748 of 2007

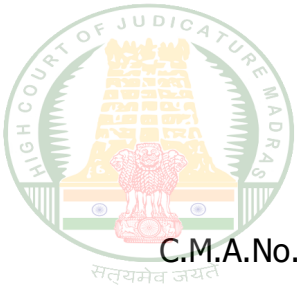
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16. Therefore, the grounds raised by the learned counsel for the Insurance Company in support of the appeal in C.M.A.No.748 of 2007 would not be sustainable. Therefore, such a ground is liable to be rejected and accordingly it is rejected.

18. It is brought to our notice by the learned counsel for the claimant / appellant in CMA No.736 of 2007 that, as per the award passed by the Tribunal through the impugned judgment, the award amount has been deposited and it is lying to the credit of M.A.C.T.O.P.No.3640 of 2002 on the file of the V Judge, Motor Accidents Claims Tribunal (Court of Small Causes, Chennai). The appellant wants to withdraw the same. Such a permission is granted.

19. Insofar as the enhanced amount of Rs.4,32,000 (Rs.13,82,000 – Rs.9,50,000/-) by virtue of this judgment passed today is concerned, the same shall be deposited by the Insurance Company within a period of two months from the date of receipt of a copy of this order. Once such enhanced amount is deposited, it is open to the claimant / appellant to withdraw the same.

20. Resultantly, C.M.A.No.748 of 2007 filed by the Insurance Company is liable to be dismissed and accordingly it is dismissed. No costs. The appeal in



C.M.A.Nos.736 and 748 of 2007

C.M.A.No.736 of 2007 is allowed by modifying the amount as we have awarded in

this appeal to the extent indicated above. With these modifications and directions,

C.M.A.No.736 of 2007 is allowed. No costs.

(R.SURESH KUMAR J.) (A.D.MARIA CLETE J.)
04-02-2025

Index : Yes/No

Neutral Citation : Yes/No

KST

To

1. V Judge, Motor Accidents Claims Tribunal (Court of Small Causes, Chennai).
2. New India Assurance Co.Ltd.,
Motor Third Party Claims Cell, No.45,
Moore Street, Chennai-1.



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R.SURESH KUMAR, J.

AND

A.D.MARIA CLETE, J.

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C.M.A.Nos.736 and 748 of 2007

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