

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.840 of 2014

Gajendran

S/o V.Iyyanar Ayyappan

.. Appellant

-vs-

1. S.Ganesan

(R1 remained ex parte in lower Court)

2. The New India Assurance Co.Ltd.,

No.45, Second Line Beach, Moore Street

Chennai 600 001

.. Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 15.11.2012 made in M.C.O.P.No.2900 of 2005 on the file of the Motor Accident Claims Tribunal, V Judge, Court of Small Causes, Chennai.

For Appellant :: Mrs.Ramya V.Rao

For Respondents :: Ms.A.Manjumatha for
Mr.N.Anand for R2
R1-Ex parte before Tribunal

JUDGMENT

It is a case of injury sustained by the appellant herein, who was working as a Tax Assistant in the office of the Commissioner of Customs, Chennai at the time of accident and earning a sum of Rs.9,331/- as his monthly salary. As the Tribunal has awarded only a sum of Rs.30,000/-, as against the claim of Rs.2,00,000/-, the present appeal has been brought for enhancement of the compensation.

2.Heard both sides.

3. On 17.12.2004 at about 20.45 hours, while the appellant was standing with his motorcycle bearing Registration No.TN 07 X 2129 at E.C.Road opposite to Nathan Complex, Tiruvanmiyur, Chennai, a share auto bearing Registration No.TN 07 M 7556, proceeding from north to south direction in a rash and negligent manner, hit the appellant, as a result he sustained grievous injuries all over his body. Immediately he was rushed to Swaram Nursing Home, Tiruvanmiyur for treatment, wherein he was issued with the medico legal case sheet marked as Ex.P1 and the OP chit marked as Ex.P2. However, when a claim was made before the Tribunal, on perusal of the medico legal case sheet, Ex.P1 and the OP chit, Ex.P2 issued by Swaram Nursing Home showing that the appellant sustained gross odema, fracture of neck of second, third and fourth left meta tarsals and also taking note of the fact that he was treated as an out-patient on 19.12.2004, further observing that there was no grievous injuries sustained by him, considering the disability certificate, Ex.P8 issued by Dr.K.J.Mathiazhagan, who was examined as P.W.2, certifying 25% disability for the injuries sustained by the appellant, fixed 10% disability and awarded a sum of Rs.20,000/- at the rate of Rs.2,000/- per percentage of disability. In addition thereto, a sum of Rs.3,000/- towards transportation charges, a sum of Rs.1,000/- towards extra nourishment and a sum of Rs.6,000/- towards pain and suffering have been awarded by the Tribunal. Considering the fact that the appellant claimant was hit by the offending share auto bearing Registration No.TN 07 M 7556 when he was standing with his motorcycle at E.C.Road, opposite to Nathan Complex, Tiruvanmiyur, Chennai on the date of accident, which was insured with the second respondent insurance company, as a result he was unable to attend his office and also suffered much pain, this Court is inclined to fix a sum of Rs.3,000/- for each percentage of disability and accordingly awards a sum of Rs.30,000/- for 10% disability. For pain and suffering, a sum of Rs.26,000/- is awarded. However, the award of Rs.3,000/- towards transportation charges and Rs.1,000/- towards extra nourishment are sustained. Thus, the appellant is entitled to a total compensation of Rs.60,000/-, instead of Rs.30,000/- awarded by the Tribunal, which shall carry interest at the rate of 7.5% per annum from the date of petition till realisation. The second respondent-Insurance Company is directed to deposit the entire amount of compensation, less the amount already deposited, if any, along with interest to the credit of the M.C.O.P.No.2900 of 2005 on the file of the Motor Accident Claims Tribunal, V Judge, Court of Small Causes, Chennai within a period of two weeks from the date of receipt of a copy of this order. On such deposit being made, it is open to the appellant to withdraw the entire amount with accrued interest by moving appropriate application before the Tribunal, after complying

with the formalities. With this modification in the award of the Tribunal, the appeal stands allowed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ss

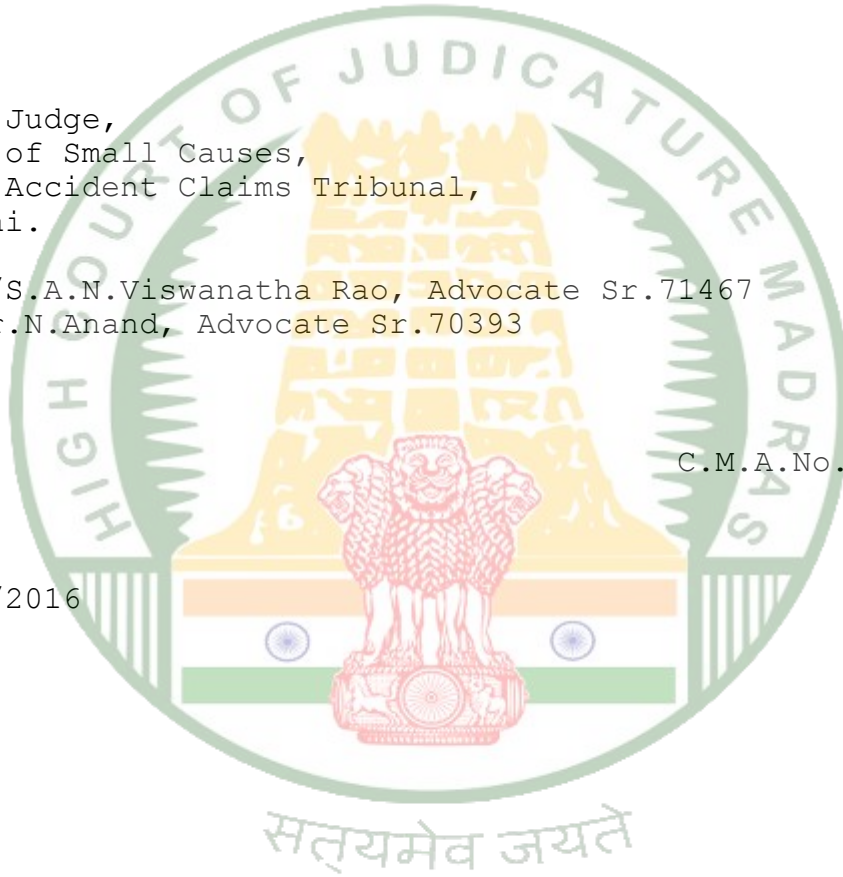
To

The V Judge,
Court of Small Causes,
Motor Accident Claims Tribunal,
Chennai.

+1cc to M/S.A.N.Viswanatha Rao, Advocate Sr.71467
+1cc to Mr.N.Anand, Advocate Sr.70393

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srg 21/12/2016



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