

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2016

C O R A M

THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

C.M.A. No.226 of 2011

M/s. Chola mandalam MS General
Insurance Company Limited
(Dare House), 234, NSC Bose Road,
Chennai 600 001. Appellant/2nd Respondent

- Vs -

1.D.Arivazhagan 1st Respondent/Petitioner

2.T.Danasekar
(R2 set ex-parte in
the Lower Court) 2nd Respondent/1st Respondent

Civil Miscellaneous Appeal made under Section 173 of Motor Vehicle Act, 1988, against the award passed in M.A.C.T.O.P.No. 2149 of 2005, dated 12.03.2010, on the file of Motor Accidents Claims Tribunal, (V Judge) Court of Small Causes, Chennai.

For Appellant : Ms.Sreevidhya
for Mr.K.S.Narasimhan

For Respondent-1 : Mr.P.Chinnaraj

J U D G M E N T

The insurance company has filed this appeal challenging the quantum awarded to the claimant in M.A.C.T.O.P.No.2149 of 2005, dated 12.03.2010 on the file of Motor Accidents Claims Tribunal, (V Judge), Court of Small Causes, Chennai.

2. It is a case of injury. The accident in this case happened on 18.02.2005. While, the injured claimant, Arivazhagan aged about 41 years was walking along the Evening Bazaar Road, at that time an Auto bearing Registration No.TN-04-M-3258 which was driven by its driver in a rash and negligent manner and hit against the claimant, due to which, he sustained grievous injuries all over the body including head injury, left leg knee dislocation and laceration at left foot and ankle. The claimant was taken to Government Hospital, Chennai for

treatment. According to the claimant, he suffered haemorrhage contusion over right parietal region extending to occipital region and dislocation of left knee and was treated as inpatient from 18.02.2005 to 19.02.2005 and for dislocation of left knee POP applied. Stating that he is working as Maistry and was earning Rs.7,000/-per month, he claimed a sum of Rs.1,50,000/- as compensation.

3. In support of the claim, the claimant was examined as P.W.1 and the Doctor as P.W.2. Ex.P1, Copy of the FIR, Ex.P2, Rough Sketch, Ex.P3, Discharge Summary, Ex.P4, Prescription, Ex.P5, Medical Bills, Ex.P6, Salary Certificate, Ex.P7, Disability Certificate issued by P.W.2, Ex.P8, X-ray film, were marked on behalf of the claimant. The respondent examined one witness and marked Exs.R1 and R2 before the Tribunal.

4. As far as the negligent aspect is concerned, the Tribunal came to the conclusion that the driver of the auto drove the vehicle in a rash and negligent manner and was responsible for the accident and consequently, the liability to compensate the claimant was fixed on the appellant insurance company. Such finding of the Tribunal is not disputed by the learned counsel for the appellant and the same is confirmed.

5. The injured claimant was aged 41 years at the time of accident and although he has stated that his income was Rs.7,000/-per month and he has also produced Ex.P6, Salary Certificate the Tribunal has fixed the monthly income of the claimant as Rs.4,500/- per month. The Tribunal has also discussed the nature of injuries the consequence thereof and based on the evidence of Doctor observed that the disability of 30% fixed by the doctor is on the higher side and allowed partial disability of 20%. Since the Tribunal has come to the conclusion that the claimant suffered partial disablement a sum of Rs.9,000/- is fixed towards loss of earning during the period of treatment from 28.02.2005 to 28.04.2005. The Tribunal also granted compensation on other heads as well. In all, a sum of Rs.3,55,433/- was awarded as compensation along with interest @ 7.5% per annum. Details of the award are as follows:-

Disability 20%	Rs. 20,000/-
Medical Expenses	Rs. 3,650/-
Transport Expenses	Rs. 2,000/-
Pain and Sufferings	Rs. 12,000/-
Loss of Amenities	Rs. 7,000/-
Loss of income during the period of treatment	Rs. 9,000/-

Rs. 3,55,433/-	

6. It is contended that though the injured claimant suffered injuries as stated above and the disability has been assessed at 30%, the Tribunal has taken into account only 20% which is erroneous. The opinion of the doctor is that the disability suffered by the claimant is partial and since there is no material to support the plea that the claimant has suffered total loss of earning capacity or that his business has been completely ruined consequent to the injuries and disability, the Tribunal had fixed the disability only at 20%. From the evidence of the doctor and the findings of the Tribunal, there is no dispute with regard to the nature of the injury and disability suffered. Though the charge sheet had been filed, no finding was rendered by the Criminal Court.

7. Having heard the contention of the learned counsel on either side and on going through the documents available on record, I do not find any illegality or infirmity in the order of the Tribunal while granting compensation.

8. Therefore, the compensation awarded by the Tribunal is just and reasonable and hence, the award passed by the Tribunal is hereby confirmed. In the result, this Civil Miscellaneous Appeal is dismissed. The appellant is directed to deposit the entire award amount if not already deposited with interest @ 7.5% per annum, from the date of petition till the date of deposit, within a period of eight (8) weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same along with interest. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. The V Judge,
(Court of Small Causes)
Motor Accidents Claims Tribunal,
Chennai.

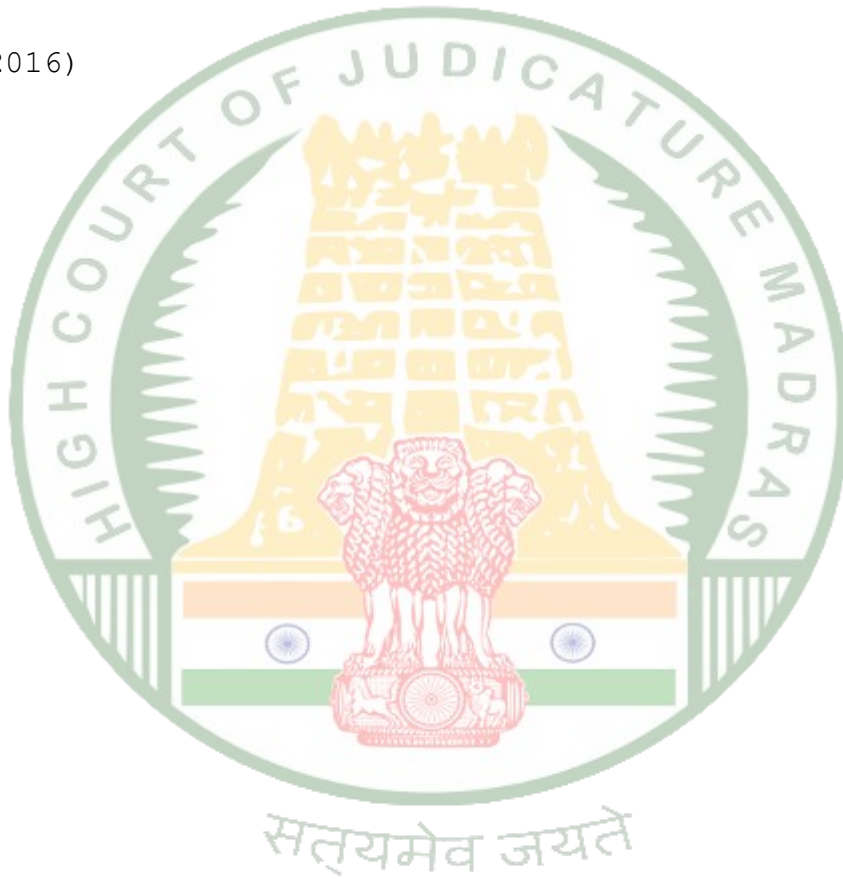
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2. The Section Officer,
V.R.Section,
High Court,
Chennai.

+1cc to Mr.Ms.Sreevidhya, Advocate, S.R.No.22949
+1cc to Mr.P.Chinnaraj, Advocate, S.R.No.22063

C.M.A.No.226 of 2011

RSK (CO)
CA(16/06/2016)



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