

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A. NO.611 OF 2016

Sudhakar ... Appellant/Petitioner

- Vs -

1. P.Raju

2. Royal Sundaram Alliance Insurance Co. Ltd.,
Subramaniam Building,
1st Floor, No.1, Club Road,
Chennai - 2. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Award and decree dated 30.06.2015 passed by the Motor Accident Claims Tribunal (Special Sub-Judge No.II), Chennai, made in M.C.O.P.No.4262 of 2013.

For Appellant : Mr.F.Terry Chellaraja

For Respondents : Mr.S.Manohar - R2

J U D G M E N T
(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent and perused the materials placed before this Court.

2. The appellant/claimant has filed the appeal challenging the Award dated 30.06.2015 passed by the Motor Accident Claims Tribunal (Special Sub-Judge No.II), Chennai, made in M.C.O.P.No.4262 of 2013.

3. It is a case of injury. On 12.06.2013 at about 01.00 hours when the injured Sudhakar was travelling as a pillion rider in a motorcycle bearing Registration No.TN-10-AD-8644 driven by one Prabhu from Chennai to Tindivanam, near Thenpakkam Coot Road and GST Road, a lorry bearing Registration No.TN-21-F-

7727 came in a rash and negligent manner in the same direction and dashed against the said motorcycle. As a result, the pillion rider, viz., injured Sudhakar sustained grievous injuries and the rider Prabhu died on the spot. Hence, the injured claimant has filed a claim petition claiming a sum of Rs.6,00,000/- as compensation. According to the claimant, he was a Centring work contractor and was earning a sum of Rs.15,000/- per month.

4. In support of the claim petition, the appellant was examined as P.W.1; K.Rangan, father of the deceased Prabhu, was examined as P.W.2; Dr.K.J.Mathiazahagan, who issued disability certificate to the injured claimant, was examined as P.W.3 and V.Thulasiraman, who is stated to be the former employer of the deceased Prabhu, was examined as P.W.4 and Exs.P-1 to P-35 were marked, the details of which are as follows:-

Ex.P-1	Xerox copy of the Accident Register
Ex.P-2	O.P. Chits
Ex.P-3	Photo with CD of the petitioner
Ex.P-4	Xerox copy of the FIR
Ex.P-5	Medical Bills
Ex.P-6	Xerox copy of the rough sketch
Ex.P-7	Final report
Ex.P-8	Xerox copy of the MVI report
Ex.P-9	X-ray
Ex.P-10	Death intimation report
Ex.P-11	Postmortem certificate
Ex.P-12	Death Certificate
Ex.P-13	Legal Heirship Certificate
Ex.P-14	Registration Certificate, Department of Industries and Commerce.
Ex.P-15	Registration Certificate of Central Sales Tax
Ex.P-16	Certificate of Registration for VAT
Ex.P-17	Balance Sheet for the year ended 31.03.2008
Ex.P-18	Balance Sheet for the year ended 31.03.2009
Ex.P-19	Balance Sheet for the year ended 31.03.2010
Ex.P-20	Balance Sheet for the year ended 31.03.2011
Ex.P-21	Acknowledgement of Income Tax 2008-2009
Ex.P-22	Acknowledgement of Income Tax 2009-2010
Ex.P-23	Invoice Book of the S.K.R. Industries

Ex.P-24	Delivery Challan of the S.K.R. Industries
Ex.P-25	IOB Statement of Account
Ex.P-26	Another set of IOB Statement of Account
Ex.P-27	Visiting Card of the deceased
Ex.P-28	Experience Certificate
Ex.P-29	Salary Certificate
Ex.P-30	Voter's Identity Card of the Deceased
Ex.P-31	Disability Certificate
Ex.P-32	X-ray
Ex.P-33	X-ray report
Ex.P-34	Xerox copy of the Provisional Registration Certificate
Ex.P-35	Xerox copy of the PAN Card with IT Returns

5. On the side of the respondents, neither any witness was examined nor any document was marked.

6. The Tribunal based on the oral evidence of witnesses, the F.I.R. and also taking into account the documentary evidence that the rider of the motorcycle was having valid driving licence to drive the vehicle and further there being no satisfactory evidence adduced on behalf of the second respondent/Insurance Company to refute the evidence as to the rash and negligent driving of the lorry, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the lorry, and therefore, the liability was fixed on the second respondent, since the lorry was insured with the second respondent and consequently the second respondent was directed to compensate the claimant. On this issue, learned counsel for the second respondent has no serious objection with regard to the finding of the Tribunal as no material has been placed to come to a different conclusion from that of the conclusion arrived at by the Tribunal. Accordingly, the Tribunal awarded compensation under the following heads:-

For 15% partial and permanent disability at the rate of Rs.3,000/- per percent	-	Rs. 45,000/-
Pain and Suffering	-	Rs. 25,000/-
Transportation Charges	-	Rs. 8,000/-
Extra Nourishment	-	Rs. 5,000/-
Cost of Attender	-	Rs. 5,000/-

Loss of income for 2 months	-	Rs. 10,000/-
Loss of future prospects	-	Rs. 25,000/-
Loss of amenities	-	Rs. 25,000/-
Medical Expenditures	-	Rs. 2,000/-
Total Compensation	-	Rs. 1,50,000/-

7. In all, the Tribunal awarded a compensation of Rs.1,50,000/= with interest at the rate of 7.5% from the date of filing of the claim petition i.e. from 01.07.2013 till the date of realization. Aggrieved by the said award, the appellant - claimant is before this Court by filing this appeal seeking enhancement of the award.

8. Learned counsel appearing for the appellant-claimant submitted that even though the doctor assessed the disability of the injured claimant at 50%, the Tribunal had fixed only 15% disability. Considering the age of the injured and the nature of injury suffered, the Tribunal ought to have awarded future medical expenses. He further submitted that the injured claimant could not do his work as before and his earning capacity is reduced. Hence, the award of the Tribunal may be enhanced. Per contra, it is submitted by the learned counsel for the second respondent/Insurance Company that taking note of the injury of the injured, the Tribunal had correctly awarded compensation. Therefore, no interference is called for with the well considered finding of the Tribunal.

9. This Court has given its careful consideration to the above contentions advanced by either parties and also perused the materials available on record.

10. With regard to the contention of the learned counsel appearing for the appellant/claimant that the Tribunal had fixed the disability at 15%, even though the doctor assessed the same at 50%, we find that the Tribunal based on medical records, had observed in paragraph Nos.12, 13 and 14 of the award that the claimant had suffered injury only on the right foot and right ankle due to the accident and the spine injury, which was stated to have suffered, was not due to the accident and in the prescription, there was no mention about the spine injury. Hence, the Tribunal has rightly assessed the disability at 15%. However, considering the age and nature of occupation of the injured claimant, who was stated to have working as Centring work contractor, the compensation in respect of other heads needs to be enhanced.

11. Accordingly, we modify the award of the Tribunal as follows:

	Compensation awarded by the Tribunal	Compensation now ordered by this Court
For 15% partial and permanent disability at the rate of Rs.3,000/- per percent	Rs. 45,000/-	Rs. 45,000/-
Pain and Suffering	Rs. 25,000/-	Rs. 35,000/-
Transportation Charges	Rs. 8,000/-	Rs. 8,000/-
Extra Nourishment	Rs. 5,000/-	Rs. 10,000/-
Cost of Attender	Rs. 5,000/-	Rs. 10,000/-
Loss of income	Rs. 10,000/- (for 2 months)	Rs. 25,000/- (for 6 months)
Loss of future prospects	Rs. 25,000/-	Rs. 25,000/-
Loss of amenities	Rs. 25,000/-	Rs. 25,000/-
Medical Expenditures	Rs. 2,000/-	Rs. 2,000/-
Total Compensation	Rs.1,50,000/-	Rs.1,85,000/-

12. In the result, this Civil Miscellaneous Appeal stands disposed of as follows:

(i) the award of the Tribunal is enhanced from Rs.1,50,000/- to Rs.1,85,000/-.

(ii) the interest awarded by the Tribunal at 7.5% per annum is confirmed.

(iii) The enhanced award amount shall carry interest at 7.5% p.a. from the date of filing of the claim petition before the Tribunal, i.e., 01.07.2013 till the date of realization.

(iv) Learned counsel appearing for the second respondent seeks time to deposit the award amount. The second respondent is granted eight weeks time to deposit the award amount now ordered by this Court, less the amount, if any deposited already, along with interest and costs.

(v) On such deposit being made, the claimant is permitted to withdraw the amount now ordered by this Court along with interest and costs.

(vi) However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
(Special Sub-Judge No.II),
Chennai

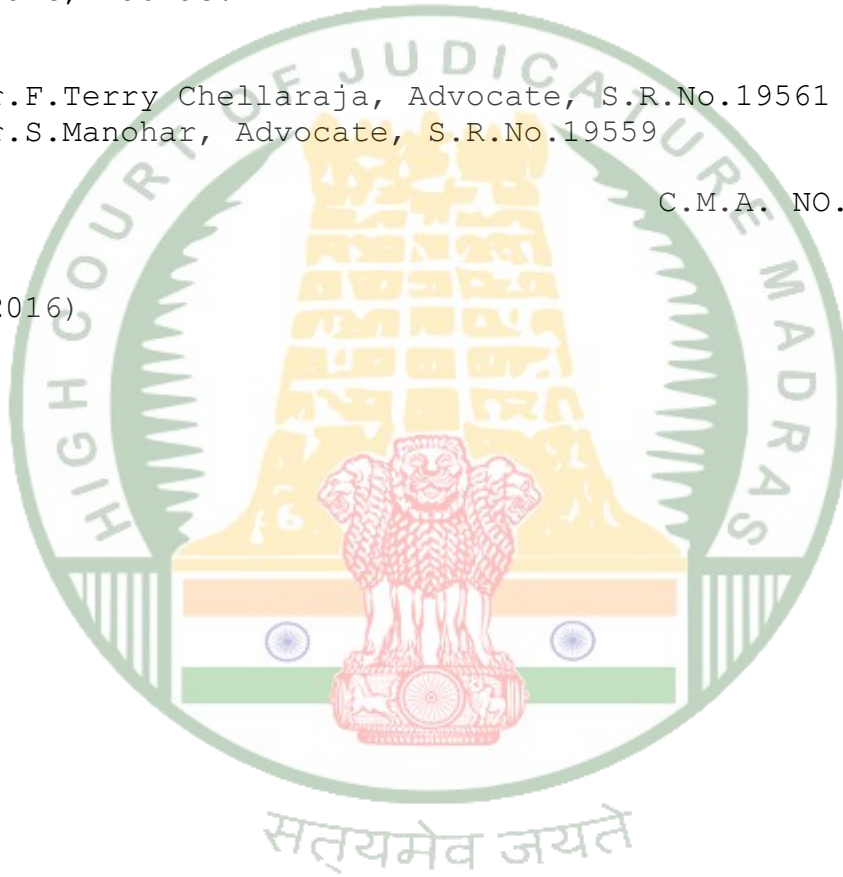
2. The Record Keeper
V.R. Section
High Court, Madras.

+1cc to Mr.F.Terry Chellaraja, Advocate, S.R.No.19561

+1cc to Mr.S.Manohar, Advocate, S.R.No.19559

C.M.A. NO.611 OF 2016

KJI (CO)
CA(26/04/2016)



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