

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A. No.233 of 2014

Ravi

... Appellant/Petitioner

Vs

1. Sugumar

2. The Divisional Manager,
The Oriental Insurance Co. Limited,
No.75, Krishnan Street,
Tiruvannamalai. ... Respondents/Respondents

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 12.08.2010, made in M.A.C.T.O.P.No.240 of 1998 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tiruvannamalai.

For Appellant : Mr.F.Terry Chellaraja

For R1 : No Appearance

For R2 : Mr.N.Sampath

JUDGMENT

Aggrieved by the award 12.08.2010, made in M.A.C.T.O.P.No.240 of 1998 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tiruvannamalai, in awarding a sum of Rs.40000/- for the injuries sustained by him, the appellant/claimant has preferred the present appeal seeking for enhancement of the compensation.

2. On 12.08.1997 at about 6.30 hrs., while the claimant was driving mini lorry bearing Registration No.TN-25-N-7428 belonging to the first respondent and insured with the second respondent from Vanangambadi to Tiruvannamalai, near Kannakurukkai, the claimant, by losing the control of the vehicle, dashed against the tamarind tree and as a result, he sustained multiple injuries. Immediately after the accident, he was taken to Government Hospital, Tiruvannamali, where he said

to have taken treatment for about one month as inpatient. Subsequently, he filed a claim petition claiming a sum of Rs.1,00,000/- as compensation.

3. The Tribunal, after considering the oral and documentary evidence, awarded a sum of Rs.40000/- as compensation for the injuries sustained by him, along with interest at 7.5% per annum from the date of petition. Aggrieved by that award, the claimant has filed the present appeal seeking enhancement of the compensation.

4. Learned counsel for the appellant/claimant submitted that the Doctor, who was examined as P.W.2 before the Tribunal, assessed the disability at 40% and to that effect, he has also issued the disability certificate, marked as Ex.P6. However, without taking note of such fact, the Tribunal has taken only 15% disability and thereby it has awarded a sum of Rs.15000/- towards disability. It is also his further contention that given the raising prices and cost of living, the Tribunal ought to have fixed Rs.2000/- per percentage of disability, instead of Rs.1000/-, for arriving compensation towards disability. On these short grounds, he prayed for enhancement of the compensation awarded by the Tribunal.

5. Per contra, learned counsel appearing for the second respondent Insurance Company mainly questioned the award on the ground of liability by contending that the claimant, who drove the vehicle in question, himself dashed against the tamarind tree standing on the left side of the road due to his rash and negligent driving, therefore, the Insurance Company is not liable to pay the compensation for the negligent driving of the claimant. It is also further contended that immediately after the accident, an FIR was also registered against the claimant in Cr.No.249 of 1997 under Sections 279 and 337 IPC, in and by which, it is stated that the claimant is responsible for the accident, therefore, the Insurance Company is not liable to pay the compensation.

6. This Court is unable to find any merit on the above said submissions. It is not in dispute that the Insurance policy obtained by the first respondent/owner of the vehicle in question from the second respondent, is in-force on the date of the accident. It is stated by the learned counsel for the claimant that pursuant to the award passed by the Tribunal, the second respondent Insurance Company has deposited the entire compensation and thereafter, the claimant has also withdrawn the same. Such submission was not disputed by the learned counsel for the second respondent Insurance Company. Thus, the question of denial by the second respondent Insurance Compensation to pay the compensation on the ground of liability does not arise.

7. As regards the quantum of compensation, it is seen from the wound certificate, marked as Ex.P3, that the claimant had suffered injuries in all over his body. It is also seen that he took treatment for about one month in Government Hospital, Tiruvannamalai, as inpatient, for the injuries suffered by him. The Doctor-P.W.2 deposed that the claimant has suffered various multiple injuries and thereby he has also produced the disability certificate marked as Ex.P6 assessing the disability at 40%. While such being the admitted scenario, I do not know how the Tribunal has fixed the disability at 15%, ignoring the disability certificate assessing disability at 40%. Apart from this, the Tribunal has also committed yet another mistake in fixing Rs.1000/- per percentage of disability, in my view, given the raising prices and cost of living, it is appropriate to fix Rs.2000/- per percentage of disability. Accordingly, this Court hereby awards a sum of Rs.80,000/- (40x2000) towards disability. Again, the Tribunal has awarded a sum of Rs.10000/- towards pain and suffering, which is not a reasonable compensation, therefore, by taking note of the fact that the claimant was taking treatment for about one month as inpatient, this Court hereby awards a sum of Rs.50,000/- towards pain and suffering. Except these modifications, the compensation awarded by the Tribunal under various other heads remains unaltered.

8. In fine, the second respondent Insurance Company is directed to deposit the entire award amount of Rs.1,45,000/- along with interest as ordered by the Court below, less of the amount already deposited if any, to the credit of M.A.C.T.O.P.No.240 of 1998, on the file of the Chief Judicial Magistrate, Tiruvannamalai, Motor Accidents Claims Tribunal, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant/appellant herein is permitted to withdraw the entire amount lying in the said credit, by moving appropriate application. Accordingly, the Civil Miscellaneous Application is allowed. The Claimant is directed to pay the necessary additional court fee for the enhanced award amount. No Costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rkm

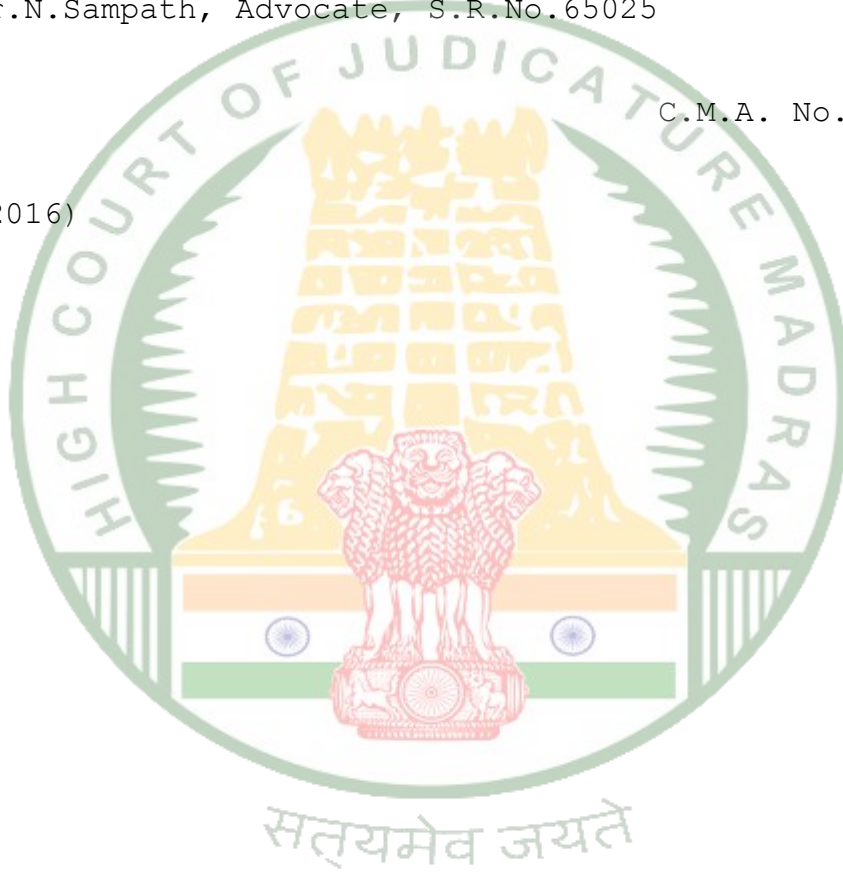
To

1. The Chief Judicial Magistrate,
(Motor Accidents Claims Tribunal),
Tiruvannamalai.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.N.Sampath, Advocate, S.R.No.65025

C.M.A. No.233 of 2014

MG (CO)
CA(20/12/2016)



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