

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 24.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.M.A.No.111 of 2001

V.Bhoopathy
Appellant/Claimants

...

Versus

1.Chellappan

2.The New India Assurance Company Limited,
Branch Office,
39-C, Bye-pass Road,
Dharmapuri Post and District. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed against the Judgment and decree dated 28.06.2000 passed in M.C.O.P.No.403 of 1998 on the file of the Motor Accident Claims Tribunal (II Additional District Judge cum Chief Judicial Magistrate), Krishnagiri.

For Appellant :Mr.D.Shivakumaran

For 2nd Respondent :Mr.S.Manohar

JUDGMENT

Having not been satisfied with the award passed on 28.06.2000 by the Claims tribunal (II Additional District Judge cum Chief Judicial Magistrate), Krishnagiri, this appeal has been filed by the claimant seeking enhancement of compensation.

2. The appellant herein, who is the claimant in the claim petition in M.C.O.P.No.403 of 1998 along with another person by name, Mr.V.Bhoopathy had moved the Claims Tribunal with a claim petition in MCOP No.403 of 1998, on the file of the learned II Additional District Judge cum Chief Judicial Magistrate, Krishnagiri, claiming a total sum of Rs.1,00,000/- for the injuries sustained by him in a road traffic accident.

3. As it is seen from the records that on 25.03.1997, the appellant herein along with his associate was proceeding a two wheeler (Suzuki Motor Cycle) belonging to his associate viz., Sundararaman who was sitting on the pillion. While they were proceeding near T.Ammapettai Junction, a private passenger bus bearing registration No.TN-45-2199 belonging to the 1st respondent came from the opposite direction in a rash and

negligent manner and dashed against the Motor Cycle. On account of this impact, both of them had sustained injuries. After, the accident both were taken to Krishnagiri, Rajasekar Hospital and admitted as in-patients.

4. At the time of accident, the appellant was working as an Advocate Clerk and thereby earning a sum of Rs.3,000/- per month. The 2nd respondent/Insurance Company with whom the offending vehicle was insured alone had contested the claim. The 1st respondent being the owner of the vehicle, remained ex-parte. On appreciation of the evidences, both oral and documentary, the Tribunal had awarded a sum of Rs.18,000/- in favour of the appellant, directing the 2nd respondent/Insurance Company to pay this amount along with interest at the rate of 12% per annum. The appellants' friend viz., Sundararaman had also filed a claim petition in M.C.O.P.No.410 of 1998. Both the claim petitions were clubbed together and common evidence was recorded in the claim petition in M.C.O.P.No.403 of 1998. The Tribunal had allowed a sum of Rs.9,000/- in favour of the other claimant viz., Sundararaman, directing the Insurance Company to pay this amount along with 12% interest. Obviously, another claimant had not preferred any appeal. The appellant viz., V.Bhoopathy, who was not satisfied with the award amount of Rs.18,000/- has preferred this appeal.

5. Insofar as, the appellant viz., V.Bhoopathy, is concerned, totally eight documents were marked in common in respect of claim petition filed by V.Bhoopathy, and also in respect of the appellants' friend viz., Sundararaman. Both claimants in M.C.O.P.Nos.403 and 410 of 1998 were examined as PWs.1 and 2 respectively. One Doctor viz., Mr.Ashokkumar has also been examined to substantiate their claim. The appellant in his evidence has stated that he had sustained fracture over his right hand elbow and had also sustained injury on left leg and there was a tear of muscle over left thigh, of which, twenty five stitches were made. However, in the wound certificate and Ex.P1, it is stated that the appellant had sustained six injuries and all the injuries were opined as simple in nature. Though, the appellant had claimed that he had been taking treatment as an inpatient for about ten days, no documentary evidence was adduced. Ex.P3 is said to be medical certificate issued in favour of the appellant viz., V.Bhoopathy. In so far as Ex.P3 is concerned, the Tribunal had found that some corrections were made in respect of the date and hence the Tribunal had observed that no evidentiary value could be attached with Ex.P3. On appreciation of other evidences, the Tribunal had found that the appellant was entitled to get the compensation under the following heads:

1. Transport expenses : Rs.500/-
2. Nutritious Food : Rs.500/-
3. Loss of cloth and other material : Rs.1,000/-
4. Loss of income : Rs.1,000/-

6. It is seen from the wound certificate that the appellant had sustained only six injuries which were opined as simple in nature and therefore, Ex.P6-Disability certificate issued by PW.3-Dr.Ashokkumar assessing the disability of the appellant at 30% was not able to be considered and therefore, the Tribunal had rejected Ex.P6-Disability certificate as it was proved that the disability assessed by PW.3 was on the higher side. Keeping in view of this fact the Tribunal had proceeded to award under the head of pain and sufferings, a sum of Rs.15,000/-. In total, the Tribunal had awarded a sum of Rs.18,000/- in favour of the appellant directing the 2nd respondent/Insurance Company to pay this amount with interest at the rate of 12% per annum.

7. Mr.Mr.D.Shivakumaran, learned counsel for the appellant has argued that the appellant had sustained fracture on the right hand elbow and another fracture on the right leg and apart from this, there was a tear in the muscle of left thigh and that those facts were not considered by the Tribunal. He has further contended that this Court might consider Ex.P6 disability certificate and assess the disability at 10% instead of 30%.

8. Since, the Tribunal had totally rejected Ex.P6-disability certificate, this Court is of the considered view that as argued by Mr.C.R.Muralidharan, the disability to the extent of 10% can be taken into account. Accordingly, a sum of Rs.10,000/- at the rate of Rs.1,000 per 1% can be allowed and apart from this, under the head of loss of income, a sum of Rs.1,000/- can be allowed, in addition to Rs.1,000/-, which was already granted by the Tribunal. Therefore, the appellant is entitled to get a sum of Rs.30,000/- as total compensation under the following heads.

Sl. No.	Head	Amount granted by the Tribunal
1	Transport expenses	Rs.1,000/- (Rs.500/- is granted in addition to Rs.500/- granted by the tribunal)
2	Loss of income	Rs.2,000/- (Rs.1,000/- is increased)

Sl. No.	Head	Amount granted by the Tribunal
3	Loss of cloth and materials	Rs.1,000/- (granted by the tribunal is maintained)
4	Nutritious food	Rs.1,000/- (Rs.500/- is granted in addition to Rs.500 which is already granted by the tribunal)
5	Pain and suffering	Rs.15,000/- (granted by the tribunal is maintained)
6	Permanent disability	Rs.10,000/- (Rs.1,000/- per 1%)
	Total	Rs.30,000/-

9. The award of the tribunal to the extent of Rs.18,000/- has been enhanced to Rs.30,000/- by adding Rs.12,000/-. Therefore, the 2nd respondent/Insurance Company is directed to pay the enhanced amount of Rs.12,000/- along with the interest at the rate of 12% per annum from the date of petition within a period of three weeks. The original award of Rs.18,000/- being not deposited earlier, the Insurance Company is directed to deposit the above said amount into the credit of MCOP.No.403 of 1998, on the file of the II Additional District Judge cum Chief Judicial Magistrate, Krishnagiri, within a period of three weeks. On such deposit being made, the appellant is entitled to withdraw the entire award amount along with accrued interest without filing any formal application seeking permission. Accordingly, the Civil Miscellaneous Appeal is partly allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

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1.The Motor Accident Claims Tribunal,
II Additional District Judge
cum Chief Judicial Magistrate,
Krishnagiri.

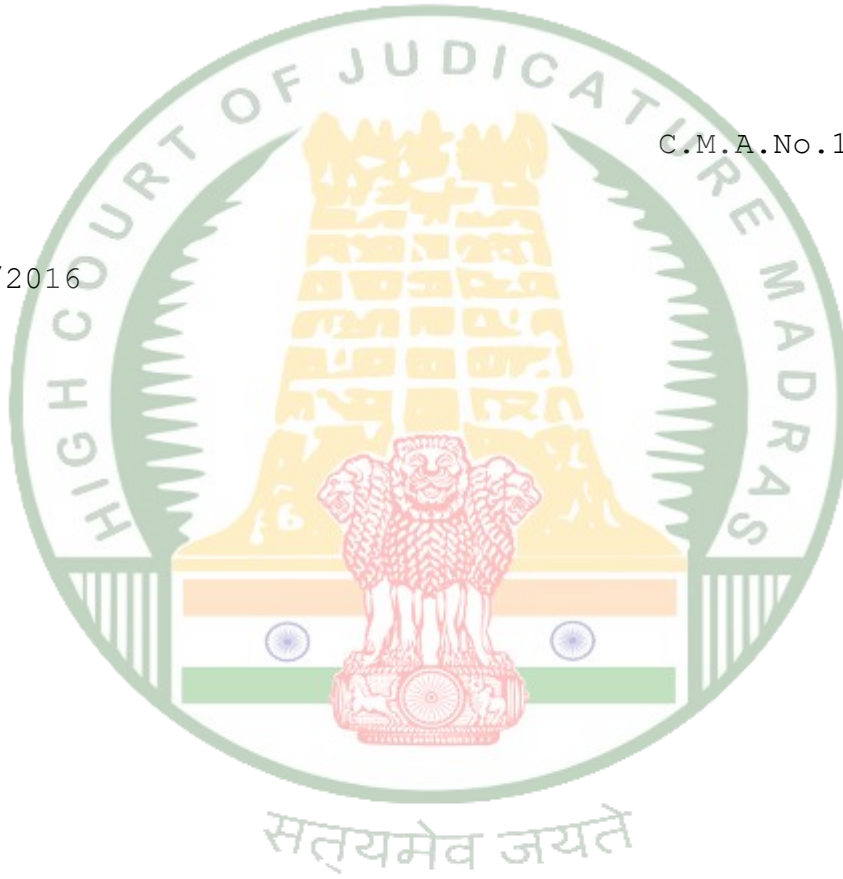
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The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.D.Shivakumar, Advocate Sr.35407
+1cc to Mr.S.Manohar, Advocate SR.35473

C.M.A.No.111 of 2001

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srg 02/09/2016



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