

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.2970 of 2011

G.Ravi

..Appellant/Petitioner

Vs.

1.Om Sakthi Travels Pvt Ltd.,
23, Devi Nagar,
Thirunindravur,
Thiruvallur District.

2.ICICI Lombard General Insurance Co. Ltd.,
84-85, Wall Tax Road,
Chennai - 600 003. ...Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and judgment passed in MCOP.No.631 of 2009 dated 07.3.2011 on the file of the Motor Accident Claims Tribunal (II Small Causes Court), Chennai.

For Appellant :Mr.S.Udayakumar

For Respondents :Ms.R.Sreevidhya [R2]

R1 - No appearance

JUDGMENT

This appeal is preferred by the claimant seeking enhancement of compensation for the injury that he had suffered when a bus belonging to the first respondent and insured with the second respondent hit him from behind. The accident had taken place on 18.09.2008. The appellant/claimant is stated to be a milk vendor, aged 35 years, and in the accident he suffered multiple rib fractures, fracture of vertebra and scapula and other multiple abrasions. His disability was assessed by P.W.2, the doctor at 55%. He approached the Tribunal with a claim of Rs.6,00,000/- as against which he was awarded Rs.3,60,500/- payable with interest at 7.5% per annum.

2. The Tribunal found that the bus driver did not possess a valid driving licence at the relevant time when the accident took place and accordingly applied the doctrine of "pay and recover", directing the second respondent/Insurance Company to

meet the liability arising out of the accident and then to recover the same from the first respondent.

3. In assessing the extent of disability and the quantum of damages to be awarded, the Tribunal has relied on the medical evidence of P.W.2 Dr.N.Saichandran, and determined the extent of disability of the appellant at 45%. The compensation awarded on various heads by the Tribunal are tabulated as under :

Heads	Amount Awarded (Rs.)
Permanent disability	90,000.00
Loss of income during treatment	13,500.00
Transport charges	11,000.00
Extra nourishment	2,000.00
Damage to clothes and articles	1,000.00
Medical expenses	2,23,000.00
Pain and sufferings	20,000.00
Total :	3,60,500.00

4. The learned counsel for the appellant argued that the appellant is a milk vendor by avocation and was only 35 years old at the time of accident and in fitness of things the Tribunal should have treated the same as functional disability and should have awarded compensation accordingly. This apart, argued the counsel, the Tribunal has failed award any compensation on some of the General heads of damages such as loss of earning during treatment period, pain and suffering and extra nourishment.

5. Per contra, the learned counsel for the insurance company contended that the Tribunal's assessment of damages has been just, fair and appropriate and the same hardly required to be interfered with.

6. On a proper consideration of the evidence available, it is seen that the nature of injuries sustained by the appellant are rib and scapula fractures and they were of such nature that they would not affect the earning capacity of the appellant. Therefore, this court finds that the approach of the Tribunal in assessing damages on the head of disability does not require any interference. However, on certain heads of general damages, compensation awarded requires some interference. This alone is rectified. Reckoning his monthly income at Rs.4,500/- the

compensation awardable on the head of loss of income is determined at (Rs.4,500 x 5) Rs.22,500/-. On the head of pain and suffering the compensation awarded is enhanced from Rs.20,000 to Rs.30,000/-. Compensation towards extra nourishment is increased from Rs.2,000 to Rs.10,000/-. Towards attendant charges Rs. 10,000 and towards loss of amenities Rs.15,000/- is now awarded. In the final analysis the compensation awarded is enhanced by Rs.50,500/-.

Heads	Amount Awarded (Rs.)
Permanent disability	90,000.00
Loss of income (for 5 months)	22,500.00
Transport charges	11,000.00
Extra nourishment	10,000.00
Damage to clothes and articles	1,000.00
Medical expenses	2,23,000.00
Pain and sufferings	30,000.00
Attendant Charges	10,000.00
Loss of amenities	13,500.00
Total :	4,11,000.00

7. In the result, the appeal is partially allowed and the compensation payable to the appellant is enhanced from Rs.3,60,500/- to Rs.4,11,000/- and the claimant is directed to realize the entire compensation amount with all accrued interest from the second respondent/Insurance company. The second respondent/insurance company is directed to deposit the entire compensation amount with all accrued interest, less if any already deposited, within four weeks from the date of receipt of a copy of this order, whereupon the claimant is entitled to withdraw the same forthwith. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Small Causes Court No.II,
Chennai.

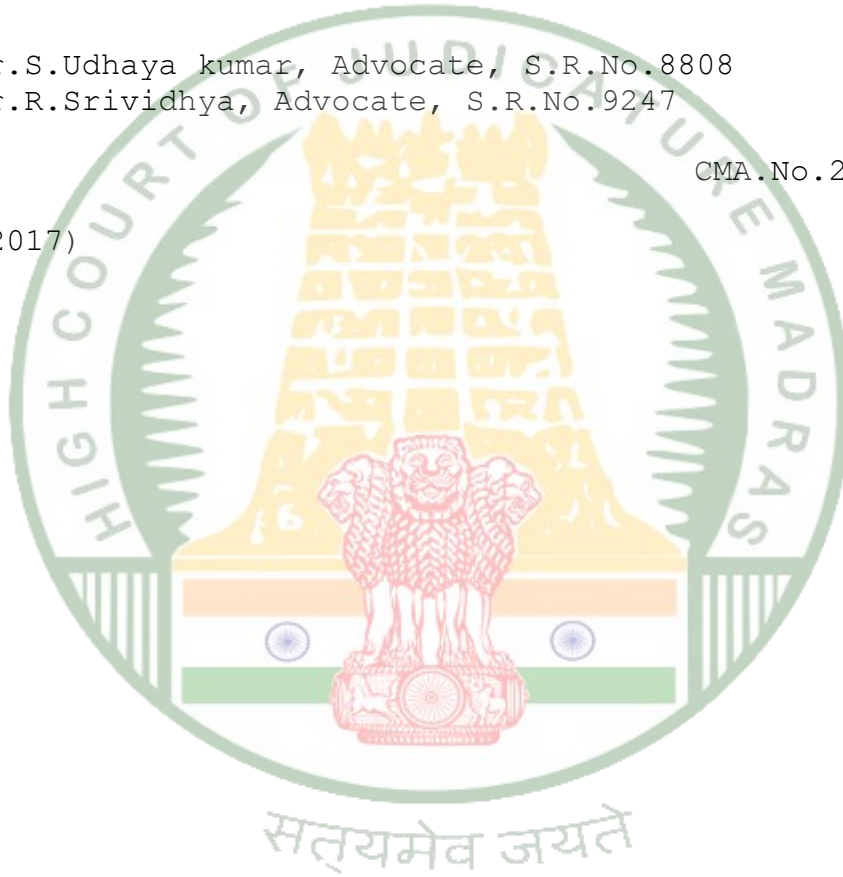
2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.S.Udhaya kumar, Advocate, S.R.No.8808

+1cc to Mr.R.Srividhya, Advocate, S.R.No.9247

CMA.No.2970 of 2011

VS (CO)
RS (01/06/2017)



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