

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

C.M.A.No.2584 of 2014

Regan

... Appellant /Claimant

..vs..

1. K.R.S.Chandrasekaran
2. United India Insurance Company Limited,
Salem Branch Office - 3,
137D, Seri Road, Salem - 1 ... Respondents/Respondents

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree, dated 10.09.2013 made in M.C.O.P.No.875 of 2010 on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Salem.

For Appellant : Mr. C.Kulanthaivel

For Respondents : Mr. T.Ravichandran, for R-2,
No Appearance, for R-1

JUDGMENT

This Appeal has been filed by the claimant, challenging the finding on contributory negligence as well as the quantum of compensation.

2. It is the case of the claimant / appellant that the quantum of compensation is inadequate and it requires enhancement as claimed in the grounds of Appeal.

3. The claimant, aged about 19 years, a painter by profession, self-employed, earning a sum of Rs.6,000/- per month, met with an accident on 30.07.2010. According to the claimant, he sustained disability of 30%, as assessed by the Doctor and as certified in the Disability Certificate under Ex.P-6. He had been treated as an inpatient in the hospital for a period from 30.07.2010 to 08.08.2010.

3.1. According to the Doctor (P.W.2), the claimant suffered

fracture on his left side head and the Doctor has clearly deposed that the claimant, due to injury, is facing loss of memory, not able to walk in straight line, heavy headache and he is not able to do his avocation as before. The Tribunal has awarded only a sum of Rs.50,000/- and the breakup details are as follows:-

30% disability (Rs.1500/- x 30)	-	Rs. 45,000/-
Pain and suffering	-	Rs. 45,000/-
Nutrition	-	Rs. 5,000/-
Transport Expenses	-	Rs. 5,000/-

Total amount fixed as comp.		Rs. 1,00,000/-
(Less) 50% negligence fixed on claimant		Rs. 50,000/-

Balance		Rs. 50,000/-

4. The learned counsel for the appellant would point out that the Tribunal is not justified in giving a finding that there was contributory negligence on the part of the claimant, when the claimant had travelled only as a passenger, who was inside the bus at the time of accident; in the First Information Report, the entire allegation has been made only as against the driver; it is the case of claimant that because of the sudden break applied by the driver, the claimant fell down from the moving bus and that is how, the accident had occurred and out of this impact, the claimant did not contribute anything to the accident and therefore, the finding of the Tribunal on the contributory negligence is unjustified.

4.1. The driver, who has examined before the Tribunal, has given evidence stating that the claimant was standing inside the bus and he has no place to sit and therefore, he was standing at the backside of the bus, at the time of accident. He has further deposed that, even if there is a heavy crowd, there is responsibility on the part of the passengers to take care of themselves.

4.2. This evidence itself will go to show that the negligence cannot be on the part of the passenger (claimant). If the bus is overcrowded, it is for the conductor, to ensure that there is no overload and in case of unavoidable over loading, it is his duty to ensure that the crowd is not to the extent of enabling the passengers to fell down, when breaks are applied. Therefore, going by the evidence adduced on the part of the driver, it is clear that there cannot be any contributory negligence on the part of the claimant. Therefore, the finding of contributory negligence by the Tribunal is set-aside.

5. Now coming to the quantum of compensation, the compensation on account of the pain and sufferings, extra nourishment, attendant charges, transport expenses, have to be enhanced on account of the nature of injuries, period of treatment and the consequent permanent disablement.

5.1. In respect of 30% disability, having regard to the prevailing rate of compensation, it should have been awarded at Rs.2,000/- per percentage of disability, therefore, for permanent disablement, compensation is awarded at Rs.60,000/-. In respect of other heads, this Court is of the opinion that the amounts awarded are too meager and they have to be enhanced. Hence, awarding a sum of Rs.1,00,000/- over and above (under the following breakup details) of what is awarded by the Tribunal would meet the ends of justice:-

30% disability (Rs.2000/- x 30)	-	Rs. 60,000/-
Pain and suffering	-	Rs. 25,000/-
Nutrition	-	Rs. 15,000/-
Attendant Charges	-	Rs. 10,000/-
Transport Expenses	-	Rs. 10,000/-
Loss of income during treatment period	-	Rs. 20,000/-
Loss of amenities	-	Rs. 10,000/-

Total amount fixed as comp.		Rs.1,50,000/-

6. In the result, the award is enhanced from Rs.50,000/- to Rs.1,50,000/- and this amount of compensation shall be deposited, less the amount already deposited, along with interest at 7.5% per annum, from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant / appellant is entitled to withdraw the entire compensation amount, lying in Court deposit. The claimant shall pay the deficit court fee for the enhanced compensation.

7. This Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk

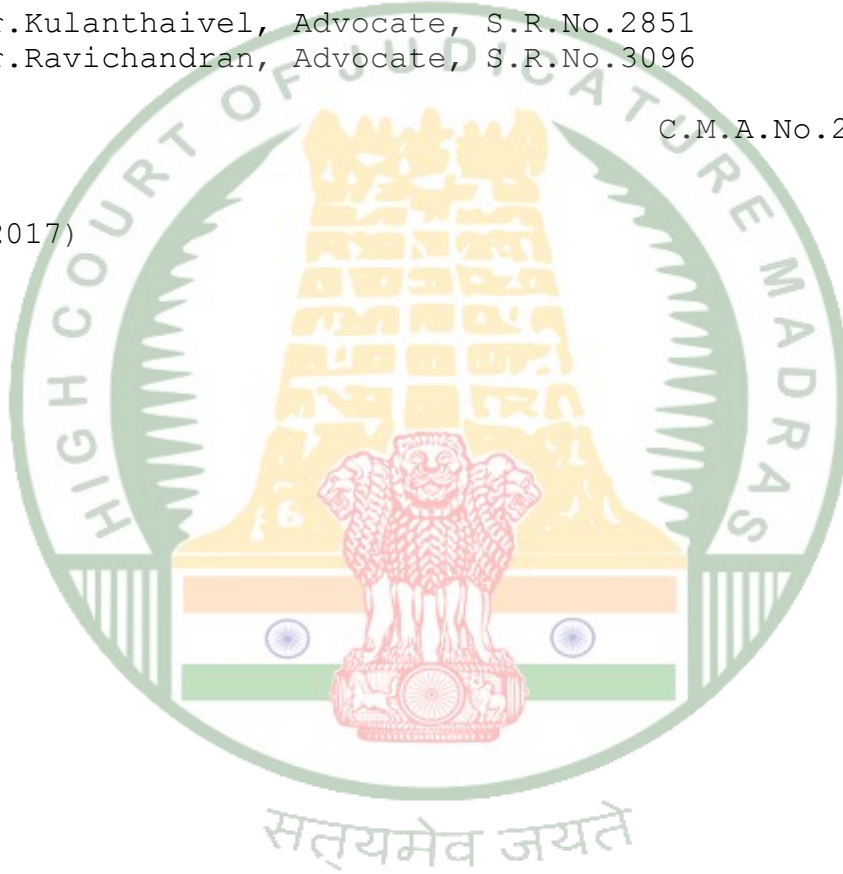
To

1. Motor Accident Claims Tribunal,
II Additional Sub Court,
Salem.
2. The Section Officer, V.R.Section,
Madras High Court, Chennai 104

+lcc to Mr.Kulanthaivel, Advocate, S.R.No.2851
+lcc to Mr.Ravichandran, Advocate, S.R.No.3096

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PA(CO)
RS(13/04/2017)



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