

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-04-2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.127 of 2010

R.Manikandan (Deaf & Dumb)

Rep.by his mother & next friend Sathiya ... Appellant/
Petitioner

Vs

1.E.Srinivasan

[R-1 was set exparte in Trial Court]

2.National Insurance Co. Ltd.,

Motor Third Party Claims Office,

No.751, Anna Salai,

Chennai - 2.

... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 08.02.2008, made in M.A.C.T.O.P.No.2430 of 2004, on the file of the II Judge, Motor Accident Claims Tribunal (Small Causes Court), Chennai.

For Appellant : M/s.C & K Law Firm

For Respondent : Mr.S.Vadivel for R2

R1 - Exparte

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the judgment and decree, dated 08.02.2008, made in M.A.C.T.O.P.No.2430 of 2004, on the file of the II Judge, Motor Accident Claims Tribunal (Small Causes Court), Chennai.

2. The appeal has been preferred by the appellant/claimant against the amount of Rs.1,01,540/- awarded by the Tribunal as compensation for the injuries sustained by him in the accident occurred on 17.04.2004.

3. According to the appellant/claimant, on 17.04.2004, at 1.30 hrs., while he was travelling in an autorickshaw bearing Regn.No.TN 09 R 5233, along Jawaharlal Nehru 100 feet road from North to South, near Kasi Theatre traffic signal point, the driver of the autorickshaw, insured with the second respondent,

lost his control due to over speed and dashed against the central median of the road. In the said accident, the auto capsized and the appellant/claimant sustained grievous injuries. FIR was lodged against the driver of the auto rickshaw in Crime No.197/S2/2004 with J-3 Guindy Traffic Investigation Station, Guindy. Hence, the appellant/claimant filed claim petition against the 1st respondent, driver of the autorickshaw and the 2nd respondent, insurer of the 1st respondent's autorickshaw, before the Tribunal claiming a compensation of Rs.7,00,000/- for the injuries sustained by him in the accident.

4. The first respondent remained exparte before the Tribunal. However, the second respondent filed counter denying all the averments made in the claim petition and submitted that the driver of the autorickshaw did not possess a valid driving licence at the time of accident. Apart from that, he also do not possess valid permit to ply on the public road. It is also stated that the quantum of compensation claimed by the appellant/claimant is excessive.

5. Before the Tribunal, the mother of the appellant/claimant was examined as P.W.1 and Dr.J.R.R.Thiagarajan who issued the disability certificate was examined as P.W.2. Exs.P1 to P10 were marked as documents on the side of the appellant. Neither witness were examined nor documents were marked on the side of the respondents.

6. After analysing the oral and documentary evidence, the Tribunal has come to a conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the autorickshaw, insured with the second respondent and awarded a sum of Rs.1,01,540/- as compensation. Not satisfied with the amount of compensation awarded by the Tribunal, the appellant has filed the present appeal for enhancement.

7. The learned counsel for the appellant submitted that the claimant has proved the disability sustained by him by examining the Doctor, PW2 who has deposed that the claimant has suffered 70% permanent disability and due to the injuries sustained by the claimant, he is not able to do any work, as he was doing earlier. It is further submitted that the Tribunal ought to have awarded has erred in awarding a sum Rs.60,000/- towards permanent disability as against a reasonable claim of Rs.1,83,000/-. Further, it is submitted that the Tribunal has awarded only mere amounts under the heads pain & suffering, transport to hospital, extra nourishment, damages to clothing, medical expenses and loss of earnings and thus prayed for

enhancement of compensation.

8. The learned counsel for the second respondent submitted that PW2 was not the doctor who treated the claimant and that he had given the disability certificate after a period of five years of the accident and hence prayed for dismissal of the appeal.

9. Heard the parties and perused the materials available on record.

10. The second respondent has not preferred any appeal against the amount of compensation awarded by the Tribunal. The only point for consideration is whether the appellant is entitled for enhancement of compensation or not. PW2-Doctor has examined the appellant/claimant and after considering the discharge summary and on examining the appellant had certified that he had suffered 70% partial disability. However, the Tribunal, without assigning any reason had reduced the disability to 60%. In such circumstances, the amount awarded by the Tribunal at Rs.60,000/- towards partial & permanent disability is hereby enhanced to Rs.70,000/- by awarding Rs.1,000/- for each percentage of disability. Similarly, the appellant has taken treatment as inpatient as well as outpatient for the injuries sustained by him in the accident. Hence, the amount of Rs.20,000/- awarded towards pain & suffering and Mental Agony seems to be meagre and the same is hereby enhanced to Rs.30,000/-. Similarly, the Tribunal has not awarded any amount towards attender charges and hence a sum of Rs.1,000/- is awarded under this head. The amount awarded by the Tribunal towards extra nourishment is enhanced to Rs.10,000/- However, Rs.2,000/- awarded towards transport to hospital, Rs.1,000/- towards damages to clothing, Rs.1,540/- towards medical expenses and Rs.15,000/- towards loss of earnings are very fair and therefore the same are confirmed. Thus, the award of Rs.1,01,540/- awarded by the Tribunal is hereby enhanced to Rs.1,30,540/-, break-up as follows -

(1) Partial & Permanent disability	Rs. 70,000/-
(2) Pain & Sufferings & mental agony	Rs. 30,000/-
(3) Transport to Hospital	Rs. 2,000/-
(4) Extra Nourishment	Rs. 10,000/-
(5) Damages to clothing	Rs. 1,000/-
(6) Attendar charges	Rs. 1,000/-
(7) Medical expenses	Rs. 1,540/-
(8) Loss of earnings	Rs. 15,000/-

Total ... Rs.1,30,540/-

The rate of interest awarded by the Tribunal @ 7.5% remains unaltered.

11. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

12. The respondent/insurance company is directed to deposit the enhanced award amount alongwith interest and costs, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount alongwith interest and costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



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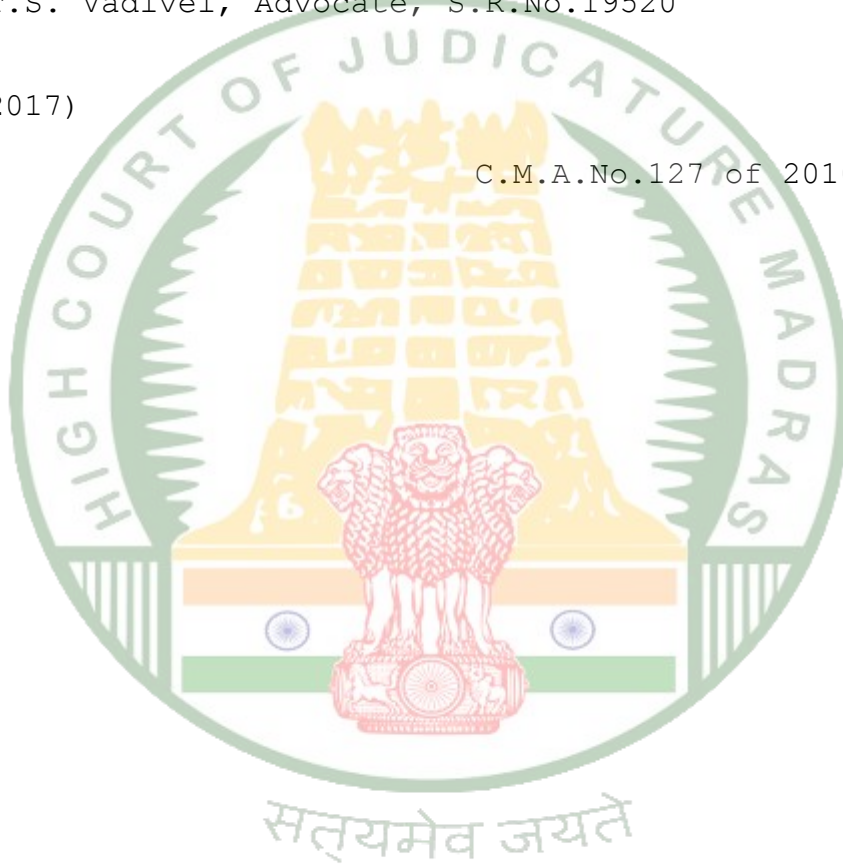
The II Judge,
Motor Accident Claims Tribunal
(Small Causes Court),
Chennai.

+lcc to Mr.C. Munusamy, Advocate, S.R.No.19709

+lcc to Mr.S. Vadivel, Advocate, S.R.No.19520

ev(CO)
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