

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.10.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.1620 of 2003

Sengammal

... Appellant/Petitioner

Versus

1. Ponnusamy

2. Mrs. R.Chellam

3. The New India Assurance Co. Ltd.,
Karaikal Branch, represented by its
Branch Manager,
Bharathiar Street,
Karaikal Town

... Respondents/Respondents

(1st respondent was set exparte
hence batta not necessary)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 25.10.2002 made in M.A.C.T.O.P.No.168 of 2001 on the file of the Motor Accident Claims Tribunal, Pondicherry at Karaikal.

For Appellant : Mr. R.Vasudevan

For T.Susindran

For 1st Respondent : R1- Set exparte

For 2nd Respondent : ----

For 3rd Respondent : Mr.S.Manohar

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 25.10.2002 made in M.A.C.T.O.P.No.168 of 2001 on the file of the Motor Accident Claims Tribunal, Karaikal.

2. The brief facts leading to the claim application are as follows :-

On 25.08.2001 at about 8.30 p.m., when the petitioner was proceeding in his TVS 50 from east to west at Avinashi Main Road, near Ayya Koil, at that time, a Tractor with Trailor bearing Registration No.TN- 51/9211, TN-51/9212 came in a rash and negligent manner and hit against the petitioner, as a result, the claimant sustained severe head injuries, dislocation

of shoulder and other fracture injuries. The petitioner was given treatment in various hospitals, he claimed a compensation of Rs.4,00,000/- for the injury, disability and loss of income.

3. The 1st respondent was set exparte before the Tribunal.

4. The 2nd respondent in the counter statement denied the mode of accident and also negligence on the part of the driver of the Tractor.

5. The 3rd respondent in the counter statement denied the averment made in the claim petition that the driver of the offending vehicle was in possession of genuine driving license. The other aspects regarding the claim of Rs.4,00,000/- is also stated as excessive.

6. The Tribunal, after analysing the evidence and documents placed before it, has fixed the liability on the respondent/Insurance Company and also awarded a sum of Rs.58,000/- as compensation under various heads as hereunder:

Heads	Amount awarded by the Tribunal
For Disability	25,000.00
For Pain and sufferings	20,000.00
For Medical Expenses	5,000.00
For Transport expenses	3,000.00
For Loss of Earning	5,000.00
TOTAL	58,000.00

Aggrieved against the said award, the claimant has preferred this appeal for enhancement.

7. In the grounds of appeal, it has been stated that the Tribunal has rightly given a finding that the accident had occurred only due to rash and negligent driving on the part of the driver of the Tractor and hence, the Tribunal ought to have awarded the compensation in full. The Tribunal has not considered the nature of injury sustained by the petitioner as fracture and the treatment given in various hospitals and number of days he undergone treatment. The other grievance stated in the appeal that no sum has been awarded by the Tribunal for the medical expenses, pain and sufferings, attendant charges, nourishment. Hence, on the whole, the claimant/appellant has preferred this appeal for enhancement of compensation.

8. Heard the learned counsel for the appellant as well as the learned counsel for the 3rd respondent and perused the documents available on record.

9. On the side of the appellant, it is argued that the Doctor has given a disability certificate, by assessing his disability at 25% as per Ex.A10, but, the Tribunal has awarded only Rs.25,000/- without considering the bone fracture sustained by the appellant in his left shoulder. On a perusal of the evidence of PW1, it is observed that he was in coma for about 3 months and he was doing his business as Maligai Merchant, in which he was earning Rs.5000/- per month. On the side of the appellant/claimant, the documents for transport expenses and other medical expenses were also filed by way of Ex.A9. The period of treatment taken by the claimant was also proved by way of Ex.A10, which clearly proves that he was under treatment from 26.08.2001 to 10.09.2001. Again, he underwent surgery and the disability certificate was also issued as such.

10. On the side of the respondent/Insurance Company, it is argued that the compensation awarded by the Tribunal is proper and by considering the disability at 25%, the sum awarded for disability at Rs.25,000/- is very much reasonable.

11. But, on perusal of the documents filed in support of the injuries, the treatment and also the surgery done to the petitioner, this court is of the view that the sum awarded for the disability at Rs.25,000/- needs to be enhanced and accordingly, a sum of Rs.37,000/- is awarded under the head disability. Further, it is observed that for pain and sufferings, only a sum of Rs.20,000/- was awarded by the Tribunal, hence, this Court enhanced the same to Rs.30,000/- For the medical expenses, the sum awarded at Rs.3,000/- is modified as Rs.10,000/- and for the Transport expenses, the sum awarded at Rs.3000/- is enhanced at Rs.10,000/-. It is also observed from the award that no sum has been awarded for nourishment, hence, this Court grants a sum of Rs.5000/- under the head "For Nourishment". It is also observed from the award that the Tribunal without considering the fact that the appellant was in coma for three months, who was running a provisional shop, has awarded lesser amount of Rs.5000/- towards loss of income, which this Court finds inadequate, hence, enhances the same to Rs.10,000/-.

12. It is represented by the respondent / Insurance Company that for the excess amount, the rate of interest may be ordered at 7.5% per annum. Considering the submission made by the learned counsel, the rate of interest for the enhanced amount is fixed at 7.5% per annum. Award modified by this Court under various heads is as follows:

Heads	Amount awarded by the Tribunal Rs.	Amount modified by this Court Rs.
For Disability	25,000.00	37,000.00
For Pain and Sufferings	20,000.00	30,000.00
For Medical Expenses	5,000.00	10,000.00
For Transport Expenses	3,000.00	10,000.00
For Nourishment	--	5,000.00
For Loss of Income	5,000.00	10,000.00
TOTAL	58,000.00	1,02,000.00

13. With the above enhancement, this Civil Miscellaneous Appeal is allowed in part. No costs.

14. Accordingly, the 3rd respondent/Insurance Company is directed to deposit the entire award amount, in respect of above Appeal as per the modified award passed by this Court, with interest and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the claimant's bank account through RTGS within one week thereon. The excess amount shall carry the rate of interest at 7.5% per annum.

15. The 3rd respondent/Insurance Company is permitted to recover the compensation paid to the claimant from the 2nd respondent/owner of the vehicle.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

uma

To

1. The Motor Accident Claims Tribunal,
Pondicherry at Karaikal.

WEB COPY

Copy to

1.The Section officer

V.R.Section, High Court, Chennai.

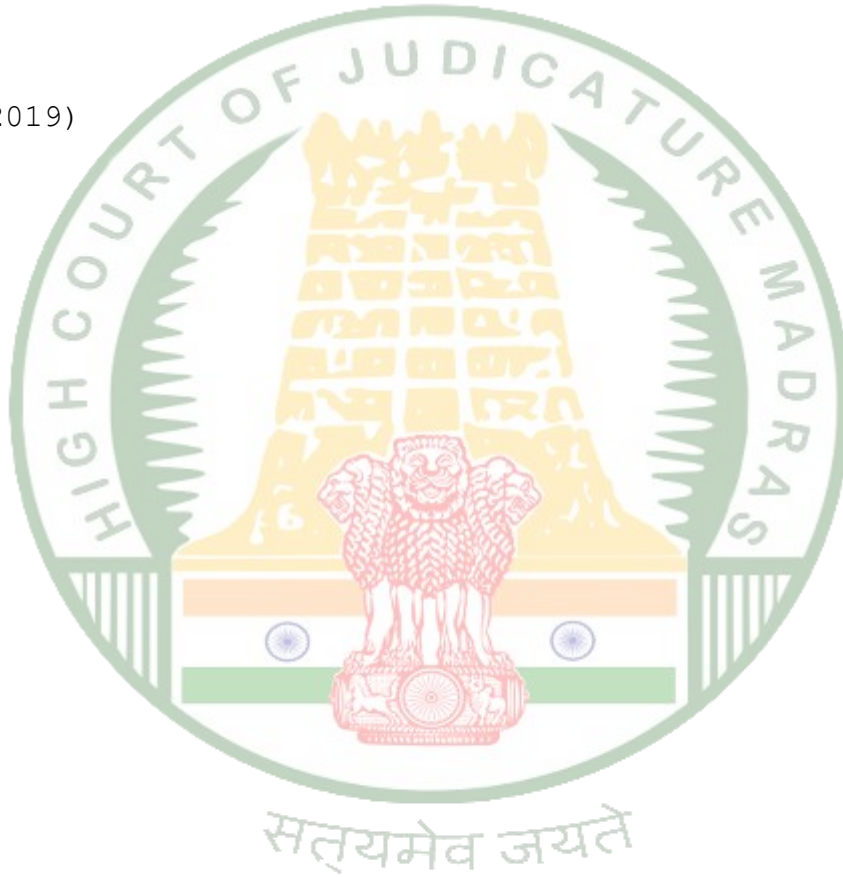
+1 CC to Mr.S.Manohar, Advocate sr 72605.

+1 CC to Mr.T.Susindran, Advocate sr 72763.

CMA.No.1620 of 2003

BS (CO)

SP(28/08/2019)



WEB COPY