

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.4199 of 2008

Gurumurthy

...Appellant/Petitioner

Vs.

1.Govindaraj

2.The Branch Manager,
New India Assurance Co. Ltd.,
Branch Office,
No.30, J.N. Street,
Pondichery.

...Respondents/Respondent

Prayer:Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the award made in M.C.O.P.No.298 of 2003 dated 06.08.2004 on the file of the Motor Vehicles Accident Claims Tribunal, Principal Sub Court, Nagapattinam.

For Appellant : Ms. S.T.P.Kuilmozhi

For Respondents : Mr.J.Chandran for R2
R1 - Not ready. Tapal returned

J U D G M E N T

The instant appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 06.08.2004 passed by the Motor Accident Claims Tribunal (Principal Sub Court) Nagapattinam in M.C.O.P.No.298 of 2003.

2. The brief facts leading to the filing of the instant appeal are as follows:

(i) The appellant sustained injuries on 29.11.2001 as a result of an accident caused by a Motor Cycle bearing Reg.No. PY 01 R 2819 owned by the first respondent and insured with the second respondent. The appellant preferred a claim petition before the Motor Accident Claims Tribunal in M.C.O.P.No.298 of 2003 seeking a compensation of Rs.5,00,000/-. The Motor

Accident Claims Tribunal, by its award dated 06.08.2004 passed in M.C.O.P.No.298 of 2003, directed the second respondent to pay the appellant a sum of Rs.60,000/- together with interest at 9% per annum from the date of claim petition till the date of realisation.

(ii). Aggrieved by the quantum of compensation awarded by the Tribunal under the impugned award, the instant appeal has been filed by the claimant seeking enhancement of compensation.

3. Heard Ms.S.T.P.Kuilmozhi, learned counsel for the appellant and Mr.J.Chandran, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

4. Despite directions given by this Court and sufficient opportunity being given to the learned counsel for the appellant for the appearance of the appellant to assess the just compensation, till date, the appellant has not been appeared before the Court for the purpose of assessing the just compensation.

5. According to the learned counsel for the appellant, the compensation awarded by the Tribunal to the appellant under the impugned award is an inadequate compensation. According to her, the assessment of compensation at Rs.50,000/- towards permanent disability is exorbitantly low and the total compensation of Rs. 60,000/- awarded by the Tribunal is a meagre compensation. According to her, due to the injuries sustained by the appellant, his leg got shortened by two centimetres and there was fusion of bones. But according to her, the Tribunal did not consider the same while assessing the compensation payable to the appellant. According to her, the appellant filed the Income Tax Returns, Discharge Summary, Injury Certificate and X-ray, which were all marked as Exhibits before the Tribunal. But the Tribunal has also not considered the same while assessing the compensation, but has rejected the Income Tax Returns and the X Ray without any basis. According to her, the salary certificate, Exhibit A-5 was also filed by the appellant to prove that he was earning monthly income of Rs.8,000/- at the time of accident, which according to her was erroneously rejected by the Tribunal under the impugned award.

6. Per contra, the learned counsel for the second respondent/Insurance Company would submit that the compensation awarded to the appellant under the impugned award is a just compensation. Further, according to him, the Tribunal has rightly rejected the salary certificate, since the appellant did not examine his employer as a witness. Further, the Income Tax Returns submitted by the appellant was also rightly rejected by

the Tribunal, since the date of the Income Tax Returns is subsequent to the date the accident.

7. This Court after considering the materials available on record, after examining the impugned award and after hearing the submissions of the respective counsels, observes following:

(a) The nature of injuries, which the appellant claims to have sustained has been disputed by the second respondent before the Tribunal. But the period of hospitalization of the appellant as a result the injuries sustained by him due to the accident has not been disputed by the second respondent. As seen from the discharge summary, Exhibit P.9 issued by B.S.S. Hospital Mandaveli, Chennai, the appellant was hospitalised in that hospital between 1.12.2001 to 08.01.2001. Earlier, immediately, after the accident, the appellant was hospitalised in the Government hospital, Pondichery on 29.11.2001 and discharged on 1.12.2001. The fact of the hospitalisation in the Government hospital, Pondichery as well as in the B.S.S. Hospital, Chennai has not been disputed by the 2nd Respondent before the Tribunal. Considering the period of hospitalisation, the Tribunal under the impugned award ought to have awarded compensation towards Attender Charges, but has not awarded any amount towards the same. The Tribunal has also not awarded any compensation towards Transportation and Extra Nourishment charges.

(b) Admittedly, the appellant has sustained fracture in the right leg [both bones], injury in the back, injury in the right hand, injury in the shoulder, injury in the lips and head injuries due to the accident.

8. Considering the nature of the injuries sustained by the Appellant, as evidenced by the wound certificate, Ex.P.2 and Disability Certificate, Ex.P.10, the Tribunal ought to have awarded a compensation towards Attender charges, Extra Nourishment charges and Transportation cost. In the considered view of this Court, the compensation towards Transportation Cost, Extra Nourishment and Attender Charges is assessed at Rs.25,000/- on lump sum basis. Therefore, the compensation awarded by the Tribunal under the Impugned award has to be enhanced from Rs.60,000/- to Rs.85,000/-

9. In the result, the compensation awarded by the Tribunal is enhanced from Rs.60,000/- to Rs.85,000/-. The 2nd respondent is directed to deposit the enhanced amount of Rs.25,000/- [as full quit] and the compensation of Rs.60,000/- [awarded by the Tribunal] along with interest at the rate of 9% from the date of claim petition till the date of realisation [if not already deposited] to the credit of M.C.O.P.No.298 of 2003 within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant is permitted to withdraw the same on filing an appropriate application before the Tribunal.

Accordingly, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

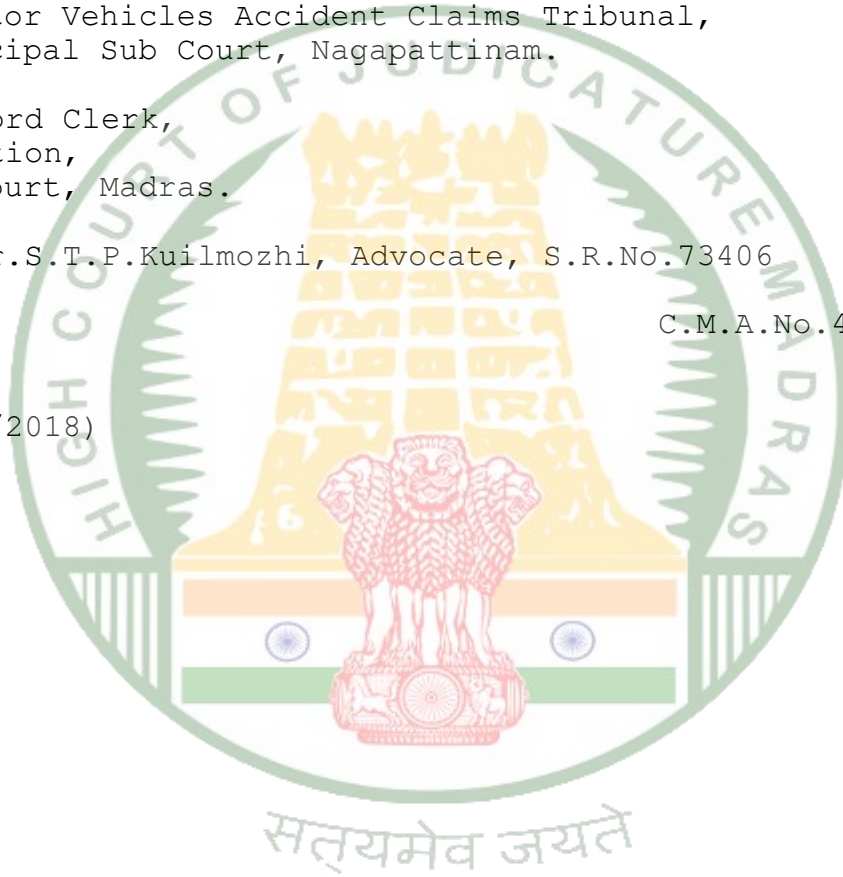
1. The Motor Vehicles Accident Claims Tribunal,
Principal Sub Court, Nagapattinam.

2.The Record Clerk,
VR Section,
High Court, Madras.

+1cc to Mr.S.T.P.Kuilmozhi, Advocate, S.R.No.73406

C.M.A.No.4199 of 2008

RJ(CO)
GSP(23/11/2018)



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