

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A. No.3541 of 2010

R.karuppanan @ Ravi

.. Appellant/Petitioner

-vs-

1.The Correspondent,
Jaya Matriculation Higher Secondary School,
MTH Road, Thiruninravoor,
Chennai.

2.The Oriental Insurance Company Ltd.,
No.8, Esplanade Road,
Chennai - 108. ... Respondents
(First Responder Setexparte in the Lower Court)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 22.02.2006 made in M.C.O.P.No.4713 of 1999 on the file of the Fast Track Court - I /Motor Accident Claims Tribunal, Chennai.

For Appellants : Mr.K.R.Ponnusamy
for Anand & Suryas

For Respondents : Mr.M.Krishnamurthy for R2
R1 - Exparte.

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.4713 of 1999 on the file of the Fast Track Court - I /Motor Accident Claims Tribunal, Chennai.

2.The brief facts of the case of the appellant/claimant in nutshell is as follows:

On 29.07.1998, the appellant/claimant was riding his two wheeler bearing registration No.TN-22-X-2235 on MTH Road, Pattabiram, Chennai-72. At about 02.00 P.M., a speeding bus bearing registration No.MSQ 7694 hit the two wheeler, as a result of which, the appellant/claimant sustained grievous injuries all over his body. Immediately, he was rushed to a nearby Hospital.

3. According to the appellant/claimant, the rash and negligent driving of the driver of the bus belonging to the 1st respondent was the cause of the accident and that since the 1st respondent has insured his vehicle with the 2nd respondent, the respondents 1 and 2 are jointly and severally liable to pay the compensation to the appellant.

4. The respondents 1 and 2 resisted the claim petition by filing their counter. The Motor Accident Claims Tribunal, after analysing the evidence on record, awarded a compensation of Rs.41,000/- together with interest at the rate of 7.5% per annum to the claimant.

5. Aggrieved over the quantum of compensation awarded by the trial Court, the claimant has filed this present appeal under Section 173 of Motor Vehicles Act, 1988.

6. Mr. K. R. Ponnusamy, learned Counsel appearing for the appellant contended that when the appellant/claimant suffered a fracture of "Brachial Plexus Injury (R) upper limb", the tribunal has awarded only a sum of Rs.41,000/- under all heads, which is very meagre.

7. Per contra, the learned Counsel appearing for the respondent contend that since the accident took place in the year 1998, the tribunal after considering the legal principles which were in vogue at that point of time, and the same need not be upset by this Court.

8. A perusal of the medical records filed by the appellant/claimant and the evidence of the doctor Sai Chandran (PW2) clearly shows that the appellant cannot do any work with his right hand. In fact, the doctor Sai Chandran (PW2) has clearly deposed that even though the appellant/claimant has right hand, it is of no use and he cannot perform any work with his right hand. Therefore, he has assessed the partial permanent disability as 80%. The trial Court without assigning any acceptable reasons has reduced the same to 50% which cannot be justified.

9.The appellant/claimant was working as a Salesman cum Cashier in a provisional store and since there is a disability to the extent of 80%, applying the principles laid down in the case of "Raj Kumar Vs.Ajay Kumar" reported in (2011) 1 SCC 343, the multiplier method has to be adopted in the instant case. Since the appellant was aged about 23 years, the proper multiplier in the instant case is '18'.

10.According to the appellant, he was earning a sum of Rs.3000/-. Since it appears to be on the higher side, Rs.2000/- is taken as monthly income of the appellant. Thus, the loss of dependency is calculated as $\text{Rs.2000} \times 12 \times 18 \times 80/100 = \text{Rs.3,45,600/-}$. Apart from this, the appellant is entitled to the sums of Rs.25,000/-, Rs.10,000/-, Rs.10,000/- and Rs.5,000/- towards loss of pain and sufferings, Extra nourishment, loss of amenities and loss of transportation respectively.

11.When the appellant/claimant has suffered disability to the extent of 80%, the tribunal has not awarded any amount to the future medical expenses. Therefore, under the facts and circumstances of the present case, Rs.10,000/- is awarded towards future medical expenses and Rs.500/- and Rs.2000/- are awarded towards damage to articles and attender charges respectively. Hence, the award of the tribunal is modified and calculated as follows:

S.No.	Heads	Amount
1.	Loss of dependency	Rs.3,45,600/-
2.	Loss of pain and sufferings	Rs.25,000/-
3.	Extra nourishment	Rs.10,000/-
4.	Loss of amenities	Rs.10,000/-
5.	Loss of transportation	Rs.5,000/-
6.	Future medical expenses	Rs.10,000/-
7.	Damage to articles	Rs.500/-
8.	Attender charges	Rs.2,000/-
	TOTAL	Rs.4,08,100/-

12.The 2nd respondent is directed to deposit the enhanced compensation amount of Rs.4,08,100/- together with interest at the rate of 7.5% per annum on Rs.3,98,100/- [Rs.4,08,100 - Rs.10,000 (future medical expenses)] within a period of four weeks from the date of receipt of a copy of this order as no interest is awarded for the amount of future medical expenses. On such deposit being made by the insurance company, the appellant is directed to withdraw the entire amount along with

accrued interest, after paying the necessary court fee for the enhanced compensation amount.

13. With the above observations, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

ay

To
The Motor Accident Claims Tribunal /,
Fast Track Court - I, Chennai.

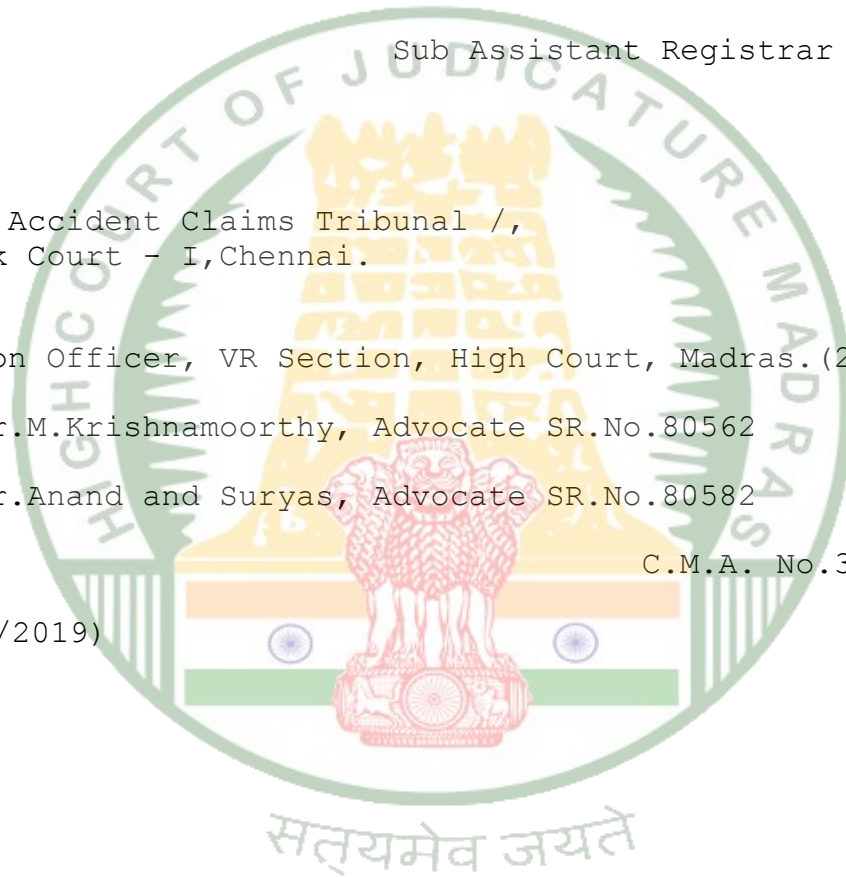
Copy To
The Section Officer, VR Section, High Court, Madras. (2 Copies)

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.80562

+1cc to Mr.Anand and Suryas, Advocate SR.No.80582

C.M.A. No.3541 of 2010

VG II(CO)
GMY(24/01/2019)



WEB COPY