

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.01.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1527 of 2017

Senthilkumar

...

Appellant/Petitioner

..vs..

1.S.Kulandaivel

2.The New India Assurance Co Ltd.,
Divisional Office, Amman Complex,
First Floor, 159-A, EVN Road,
Erode -11. ... Respondents/Respondents
(Cause title accepted vide order
of court dated 03.03.10 made in MP.1/10)

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and decreetal order dated 28.10.2005 made in MCOP.No.1508 of 2002 on the file of the Motor Accident Claims Tribunal/(Chief Judicial Magistrate Court, Namakkal), (Transferred MCOP.No.198 of 1998 Sub Court, Sankari).

For Appellants : Mr.N.Manoharan

For Respondents : Mr.J.Chandran for R-2

JUDGMENT

The appellant/petitioner has come forward with this appeal seeking to enhancement of compensation amount awarded by the Motor Accident Claims Tribunal/(Chief Judicial Magistrate Court, Namakkal), (Transferred MCOP.No.198 of 1998 Sub Court, Sankari), dated 28.10.2005 in MCOP.No.1508 of 2002.

2. For the sake of convenience, the parties referred to in this judgment as arrayed in the MCOP.

3. Today, when the matter is taken up for adjourned admission, both the counsel were present and heard.

4. The case of the petitioner is that while he was walking along Pallipalayam - Tiruchencode Road from East to West at

about 11.00 a.m., on 07.01.1998, a Tempo Van bearing Registration No.TAE 27 came from the opposite direction, driven in a rash and negligent manner, dashed against the petitioner resulting in injuries sustained by him. After getting first aid in Pallipalayam, the petitioner was admitted in Erode Government Hospital and took treatment as in patient. The petitioner examined himself as P.W.1 to prove his contention and produced Ex.P1 FIR to show that the occurrence took place due to the negligent driving of the vehicle by the first respondent driver only. The petitioner also produced Ex.P2 wound certificate to substantiate his claim about the injuries suffered by him. He also produced Ex.P8 wound certificate issued by the private hospital and Ex.P9 X-ray in support of his claim. Further he produced out patient certificate Ex.P5 and Ex.P6 case sheet in support of his claim. Further, the petitioner stated that he was aged about 16 years at the time of occurrence and he was earning a sum of Rs.2,500/- per month by working in power loom factory. Now, after the occurrence, as he has suffered fracture, he is not able to attend to his regular work. Thus, the petitioner claims a sum of Rs.2,00,000/- as compensation for his sufferings.

5. While the owner of the vehicle/the first respondent remained exparte, the insurer of the vehicle who is the second respondent opposed the petition by filing counter, contending that the claim of the petitioner about the nature of accident is totally false. The 2nd respondent also denied the claim of the petitioner about his age, income and other particulars. The respondent sought for dismissal of the petition contending that the accident does not occur due to the negligent driving of the driver of the first respondent vehicle.

6. The trial Court after analyzing the oral and documentary evidence placed before it found that the petitioner has suffered only simple injury and awarded a sum of Rs.12,000/- as compensation and allowed the petition accordingly. Aggrieved over the said finding of the trial Court, the petitioner/injured has come forward with this present appeal contending that the compensation amount given to him is less and seeks enhancement of the same.

7. The learned counsel for the appellant contended that the victim took treatment as in patient from 12.01.1998 to 18.01.1998 for the fracture sustained in his right hand and the same was not considered by the trial Court. Further, the trial Court failed to appreciate the evidence of P.W.1 regarding his income and also failed to award necessary compensation for the loss of capacity to attend his regular work. Hence, the petitioner seeks enhancement.

8. It is apparent from the available materials on record that the petitioner did not suffer any fracture and consequently, the findings of the trial Court that the petitioner suffered only simple injury is just and proper. In the absence of any materials to show that the petitioner suffered grievous injury and sustained disability, the contention of the petitioner that he must be given compensation for loss of income and future prospectus has to fail. However, the learned counsel for the petitioner contended that even the amount given for transport charges and other conventional heads are very low and sought for enhancement. The learned counsel for the 2nd respondent has serious objection for the same. In such circumstances, taking into consideration the fact that the petitioner is said to have taken treatment as in patient for few days and other attended circumstances, this Court is inclined to award a sum of Rs.4,000/- towards transport expenses and nutritious food, instead of Rs.1,000/- awarded by the trial Court. In all other aspects, the compensation awarded by the trial Court, namely, Rs.10,000/- for pain and sufferings and Rs.1000/- for medical expenses is confirmed. Thus, in total, the petitioner is entitled for Rs.15,000/- as compensation instead of Rs.12,000/- awarded by the trial Court.

9. In the result, this civil miscellaneous appeal is allowed by enhancing the compensation from Rs.12,000/- to Rs.15,000/- along with interest at the rate of 7.5% and costs. The 2nd respondent/Insurance company is directed to pay the entire amount with accrued interest and costs, less amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. In the event of amount being deposited, the claimant is permitted to withdraw the entire award amount along with interest and costs. No costs.

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sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To

1.The Motor Accident Claims Tribunal
The Chief Judicial Magistrate Court,
Namakkal.

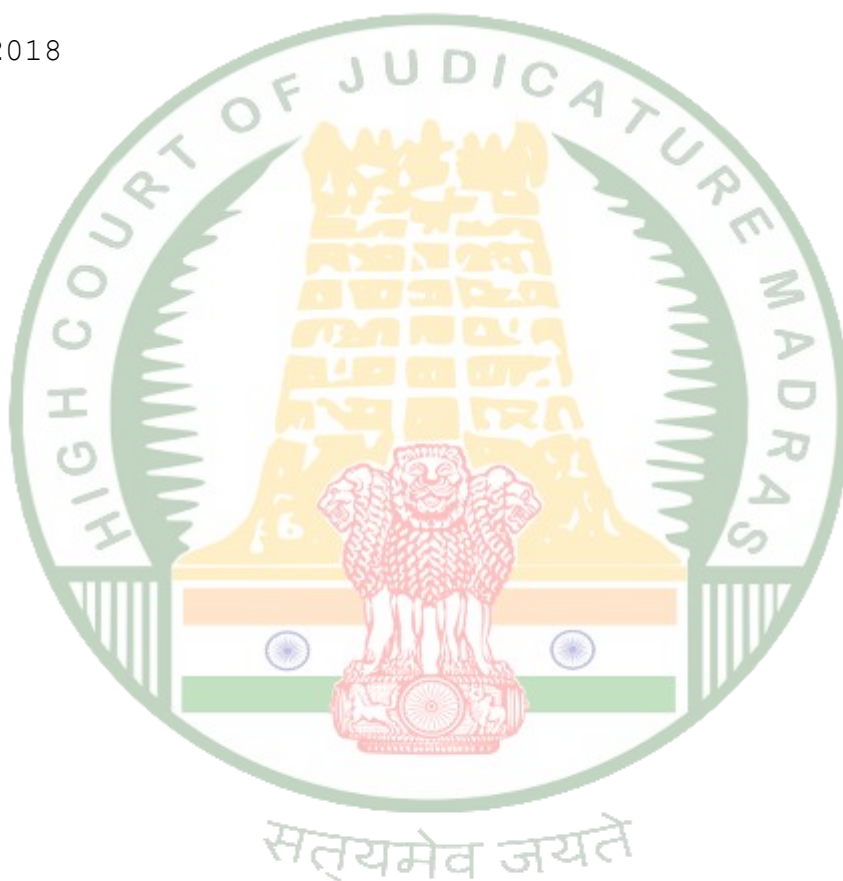
2.The Section Officer,
VR Section,
High Court, Madras

+ 1 cc to Mr.J.Chandran Advocate,SR.377

+ 1 cc to Mr.N.Manoharan Advocate,SR.417

C.M.A.No.1527 of 2017

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