

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.677 of 2015

D.Divakar

.. Appellant/Petitioner

Vs.

1.Koritala Babu

2.The United India Insurance Company Ltd.,
No.134, Greams Road,
chennai - 6.

.. Respondents/Respondents

Prayer:- Civil Miscellaneous Appeal filed against the judgement and decree dated 20.10.2011 made in M.C.O.P.No.743 of 2009 on the file of the Motor Accident Claims Tribunal, IVth Court of Small Causes, Chennai.

For Appellant : Mr.A.A.Venkatesan

For Respondents : Mr.D.Bhaskaran (for R2)
R1 - Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been prepared and filed by the Appellant / Injured against the judgement and decree passed by the learned Motor Accident Claims Tribunal, IVth Court of Small Causes, Chennai made in M.C.O.P.No.743 of 2009 dated 20.10.2011.

2.The brief history of the case is as follows:

This is a case of injury. On 21.12.2009 at about 16:30 hrs., the injured was travelling as a pillion rider in a Motor Cycle along the Tiruvallur High Road from Alamadi to Chennai, and carefully the rider of the motor cycle was took a turn towards south with showing signal, at that time a Lorry which was coming South to North direction in a very rash and negligent manner

driven by its driver at terrific speed and dashed against the Petitioner motor cycle and caused accident. As a result, the petitioner was thrown out from the Pillion and fell down and sustained grievous injuries. The respondent driver is liable for the accident, Hence, the injured claimed compensation of Rs.6,50,000/- against the respondents.

3. The respondent / insurance company have filed Counter before the Tribunal and deny all the allegations made in the claim petition and the injured put to strict proof of each and every one of the same.

4. The Appellant / Injured have examined himself as PW1 and marked the documents exhibits P1 to P15. The Ortho doctor was examined as PW2 and disability Certificate marked as Exhibit P15 to support his claim. On the other hand, the respondent / insurance company also examined his investigator as RW1 and marked the investigation reports Exhibit R2.

5. The Respondent / Insurance company Counsel argued before the Tribunal, at the time of accident there were three persons travelling in a motor cycle without following traffic rules and there is negligence on the part of the rider of the motor cycle. The learned counsel for the Appellant / Injured had contended and cited two judgements of this Court in (1) 2004 (I) TN MAC 180, (2) 2009 ACJ (I) 913. In both the cases unless there is evidence to prove that the accident took place because of act of travelling three or more persons in a single motor cycle, where the insurer of the other vehicle cannot seek reduction in compensation and it does not give rises to Contributory Negligence on the part of persons travelled in motor cycle. On the basis of the judgement, the tribunal rejected the argument and fixed entire negligence on the part of the driver of the Lorry and passed the award against the Respondent.

6. The Appellant Counsel contended that the injured was met with an accident at the age of 24 years, and working as a salesman in a private concern earned Rs.3,500/- per month. The injured was sustained compound fracture of both bone of right leg and loss of muscles over the right leg and multiple injuries all over the body. Immediately after the accident he was brought to the Hospital and admitted as in-patient from 22.12.2008 to 16.01.2009. During the period of hospitalization, he underwent surgeries. The Ortho doctor assess the disability at 50% partial and permanent. The Tribunal failed to consider all the aspects and passed very meager award of Rs.2,70,100/-, Hence, the appeal

filed by the Appellant for seeking enhancement of compensation.

7. The Respondent Counsel contended that the Tribunal has been perused all the evidence and documents available on record and passed reasonable compensation and no need to interference. The respondent Counsel never disputed the negligence. Rather, the respondent counsel sought for dismissal of this appeal on limine.

8. I heard Mr. A. A. Venkatesan, learned counsel for the appellant and Mr. D. Bhaskaran, learned counsel for the 2nd respondent and perused the entire materials available on record.

9. On careful consideration of the evidence and documents produced by the Appellant before the Tribunal and this Court find that the Respondent not disputed the negligent, Since, the appeal filed by the Appellant for seeking enhancement of compensation. Now, the only question arise for consideration of this Court is:

- 1) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?
- 2) Whether the Appellant is entitled for a enhancement of compensation?

10. This Court find that the age of the injured was 24 years who met with an accident and sustained fracture of right leg and underwent two more surgeries. Due to the accident, the injured suffered 50% of partial and permanent disability and disability Certificate marked as exhibit P15 which would definitely affect the avocation of the injured because he was a salesman. On careful consideration of all the evidence and documents produced by the Appellant before the Tribunal, this Court is felt and inclined to enhance reasonable compensation under the various heads awarded by the Tribunal.

11. In view of the above detailed discussion the Court inclined to enhance some reasonable amount under the heads as given below:-

Sl.No	Heads	Award of the Tribunal	Award of this Court
1.	Loss of Income	Rs. 17,500/-	Rs. 17,500/-
2.	Transport Hospital	Rs. 3,000/-	Rs. 5,000/-
3.	Extra Nourishment	Rs. 5,000/-	Rs. 15,000/-
4.	Damage to Clothing	Rs. 1,000/-	Rs. 1,000/-
5.	Medical Expenses	Rs.1,03,600/-	Rs.1,03,600/-
6.	Attender Charges	Rs. 10,000/-	Rs. 15,000/-
7.	Amenities	NIL	Rs. 15,000/-
8.	Pain & Sufferings	Rs. 40,000/-	Rs. 50,000/-
9.	Permanent Disability	Rs. 90,000/-	Rs.1,00,000/-
	Total	Rs.2,70,100/-	Rs.3,22,100/-

12. In the light of the above discussion, the award of the Tribunal is modified and enhanced on the above terms. The award granted by the Tribunal is enhanced from Rs.2,70,100/- to Rs.3,22,100/-.

13. In the result, the Civil Miscellaneous Appeal is partly allowed and enhanced the award of the Tribunal from Rs.2,70,100/- to Rs.3,22,100/-.The 2nd Respondent / Insurance company is directed to deposit the enhanced award amount with interest at the rate of 7.5% p.a. from the date of claim petition to till the date of deposit with cost within a period of eight weeks from the date of receipt of a copy of this order and deducted the amount, if any already deposited. After such deposit the Appellant / Injured is permitted to withdraw the award amount with accrued interest from the Court by filing necessary applications. No costs.

सत्यमेव जयते

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Motor Accident Claims Tribunal / IV Judge,
Court of Small Causes,
Chennai.

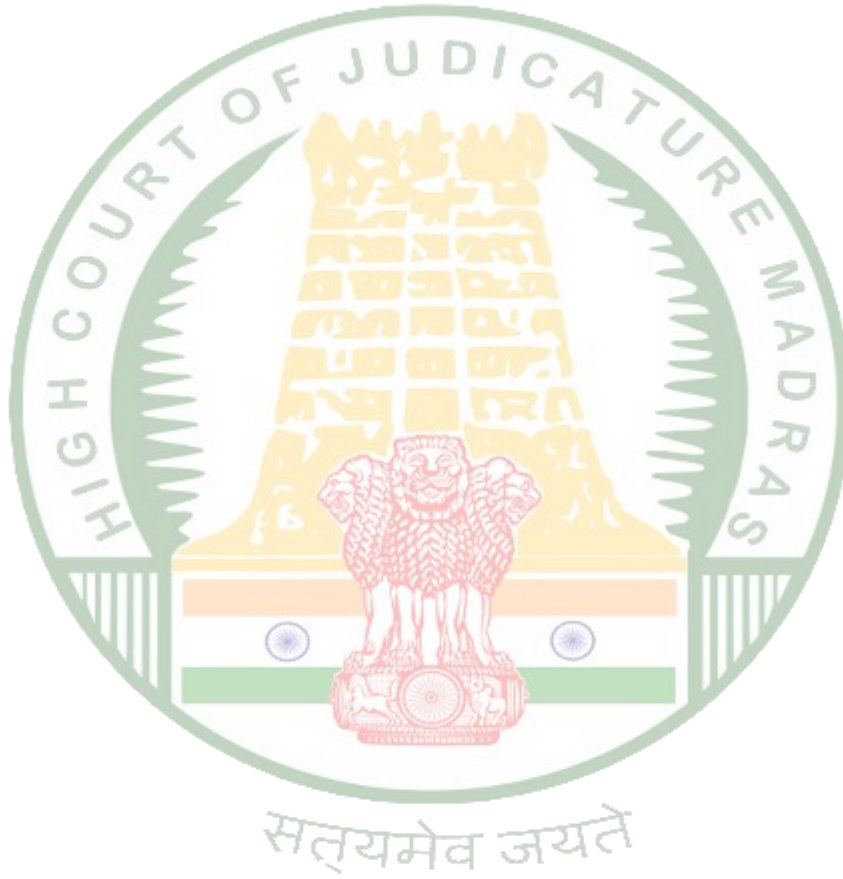
2. The Section Officer,
V.R.Section, High Court,
Madras-104.

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.66534

+1cc to Mr.A.A.Venkatesan, Advocate, S.R.No.66068

C.M.A.No.677 of 2015

RSI(CO)
CS/04/12/2018



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