

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.10.2018
CORAM
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE
C.M.A.No.3435 of 2013

Elangovan .. Appellant/Petitioner
..Vs..

1.Lingam

2.The Divisional Manager,
United India Insurance Co. Ltd.,
No.46, Katpadi Salai,
Vellore ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 28.02.2012 and made in MACTOP.No.75 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Thiruvannamalai.

For Appellant : Mr.F.Terry Chellaraja
For Respondent 2 : Mrs.R.Vijayakamala
Respondent 1 set exparte

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 28.02.2012 passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate, Tiruvannamalai) in MACTOP.No.75 of 2009.

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

2. The Appellant sustained injuries as a result of an accident that took place on 15.09.2008 caused by a bus bearing registration No.TN31-Q-5799 owned by the first respondent and insured with the second respondent. The Appellant preferred a claim before the Motor Accident Claims Tribunal in MACTOP.No.75 of 2009 seeking a compensation of Rs.5,00,000/-. The Motor Accident Claims Tribunal by its Award dated 28.02.2012 in MACTOP.No.75 of 2009, directed the second respondent to pay the Appellant a sum of Rs.65,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

3. Aggrieved by the quantum of compensation awarded by the Tribunal, the instant appeal has been filed by the claimant seeking enhancement of compensation.

4. Heard, Mr.F.Terry Chellaraja learned counsel for the Appellant and Mrs.R.Vijayakamala, learned counsel for the second respondent. The first respondent has remained ex parte both before the Tribunal as well as before this Court.

5. According to the learned counsel for the Appellant, the Appellant was aged 40 years and was working as a clerk in a provision store at the time of the Accident. The learned counsel for the Appellant submitted that the Appellant sustained rib fracture, but under the Award, the Tribunal has awarded an inadequate compensation to the Appellant. According to the learned counsel for the Appellant, even though the Doctor assessed the disability of the Appellant at 30% as per Ex.P5, the Tribunal has erroneously awarded only a sum of Rs.30,000/- as disability compensation. Further, the learned counsel for the Appellant submitted that the compensation awarded to the Appellant under various other heads is also inadequate.

6. Per contra, learned counsel for the second respondent would submit that no relevant documents were produced by the Appellant before the Tribunal to prove the nature of injuries sustained by the Appellant as a result of the accident caused by the insured vehicle. According to the learned counsel for the second respondent, the discharge summary from the hospital was also not filed by the Appellant to prove that he was hospitalised for a period of time. According to the learned counsel for the second respondent, the compensation awarded to the Appellant under the impugned Award is a just compensation.

7. This Court after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the respective counsels and after personally seeing the Appellant in open Court, observes the following:

a) The Appellant in his claim petition as well as in his deposition has stated that he has sustained fractures of 6th and 7th ribs of right side, injury in L5 and multiple injuries all over the body. The Appellant has also stated that initially he was taking treatment at Government Hospital, Tirukovilur and thereafter, he was referred to the Government Hospital at Villupuram. The Appellant has also produced the wound certificate from the Government Hospital at Tirukovilur as well as from the Government Hospital at Villupuram which were marked as Exs.A3 and A4 before the Tribunal. The Appellant has also produced the disability certificate discloses that the Appellant

suffered 30% permanent disability as a result of the accident which was also marked as Ex.A5 before the Tribunal. The X-ray of the Appellant's chest was also marked as Ex.A6 before the Tribunal. No contra evidence has been produced by the second respondent before the Tribunal to disprove the nature of injuries sustained by the Appellant as a result of an accident caused by the insured vehicle. The Tribunal under the impugned Award has awarded a sum of Rs.30,000/- towards permanent disability of 30%, calculated at the rate of Rs.1,000/- per percentage of disability. In the considered view of this Court, considering the year of the accident as held by various other decisions of this Court a sum of Rs.2,000/- per percentage of disability will be an adequate compensation to the Appellant instead of Rs.1,000/- per percentage of disability awarded by the Tribunal. Therefore, the compensation awarded towards permanent disability is enhanced from Rs.30,000/- to Rs.60,000/- by this Court.

b) The Tribunal has also awarded a sum of Rs.20,000/- towards Transportation, Extra Nourishments, Attender charges, Medical Expenses, Future Medical Expenses and Doctor Fees and Rs.15,000/- towards Pain and Suffering. In all put together, the Tribunal has awarded a total compensation of Rs.65,000/- to the Appellant under the impugned Award.

c) The Accident happened in the year 2008. From the wound certificates Exs.A3 & A4 and the deposition of the Appellant, it is seen that the Appellant has sustained fracture of the ribs. Since the Appellant has sustained fracture of the ribs, it can be inferred by this Court that he would have suffered loss of income for at least one month. Further he claims to be a clerk in a provision store and therefore, compensation ought to have been awarded by the Tribunal towards loss of income to the Appellant. Accordingly, one month income is awarded as compensation to the Appellant towards loss of income. The Appellant has claimed in his claim petition that he was earning a monthly income of Rs.5,000/- at the time of the accident. Considering the same, this Court awards the compensation of Rs.5,000/- towards loss of income.

d) Insofar as other heads of compensation awarded by the Tribunal is concerned, this court is of the considered view that there is no infirmity in the same.

8. In the light of the above observations, the compensation awarded by the Tribunal under the Award dated 28.02.2012 in MACTOP.NO.75 of 2009 is enhanced from Rs.65,000/- to Rs.1,00,000/- and the second respondent is directed to deposit the enhanced Award amount of Rs.1,00,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit, after deducting the amount that has already been deposited, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit

being made, the Appellant is permitted to withdraw the amount together with accrued interest lying to the credit of MACTOP.No.75 of 2009 by filing an appropriate application.

9. The appeal is partly allowed. However, there shall be no order as to costs.

Sd/--

Assistant Registrar(Cs IV)

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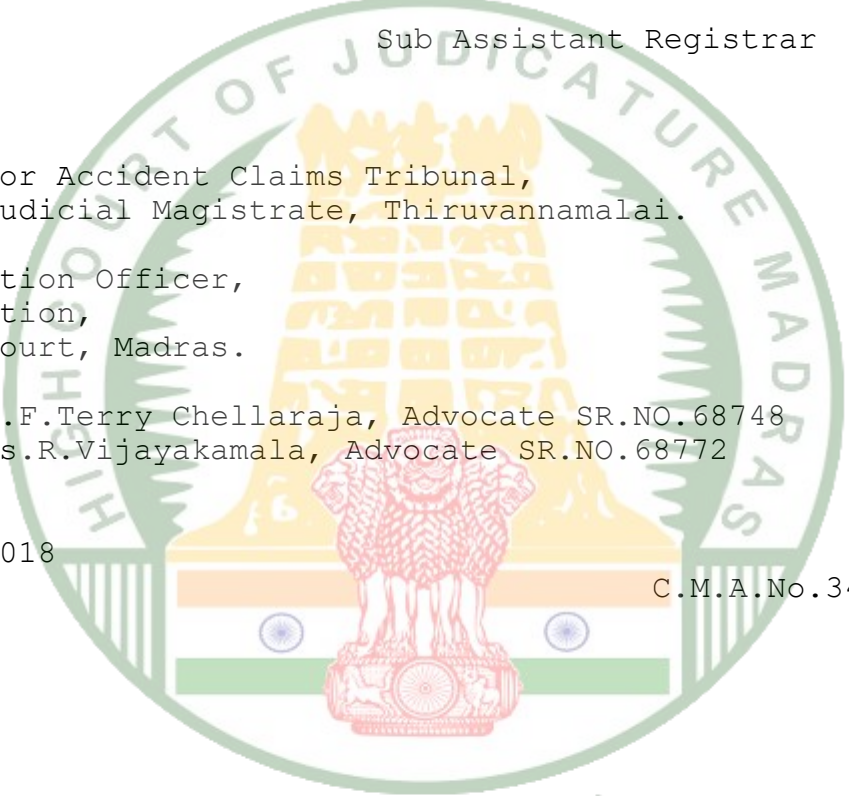
1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Thiruvannamalai.

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

+1cc to MR.F.Terry Chellaraja, Advocate SR.NO.68748
+1cc to Mrs.R.Vijayakamala, Advocate SR.NO.68772

KJ(CO)
sm:31.10.2018

C.M.A.No.3435 of 2013



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