

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3382 of 2011

N.Vadivelu

..Appellant/Petitioner

vs

1.Mr.K.S.Chandra Bose

2.The New India Assurance Company Limited
No.46, Moore Street,
Chennai-600 001

..Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 28.03.2011 made in M.C.O.P.No.3061 of 2006 on the file of Motor Accident Claims Tribunal (IV Court of Small Causes) Chennai.

For appellant : : Mr.K.Varadha Kamaraj

For Respondents : :

for R1 : : Exparte

for R2 : : Mr.K.Vinod

J U D G M E N T

The injured claimant has filed this appeal against the judgment and decree dated 28.03.2011 made in M.C.O.P.No.3061 of 2006 on the file of Motor Accident Claims Tribunal (IV Court of Small Causes) Chennai.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a case of injury. On 18.06.2006 at about 21.00 hours, while the petitioner was walking along the Palani Andavar Koil Street, an auto rickshaw bearing Reg.No.TN-02-Q-6349 driven by its driver in a rash and negligent hit the petitioner. As a result, the petitioner sustained grievous injuries. The injured Petitioner filed a claim petition seeking compensation of

Rs.1,50,000/-.

3. The 2nd respondent-Insurance Company by filing counter, denied the averments made by the petitioner and pleaded for dismissal of the claim petition.

4. In support of the claim, the claimant examined himself as P.W.1 and P.W.2 doctor was also examined and Exhibits P.1 to P.19 were marked. On behalf of the 2nd respondent/Insurance Company, neither any witness was examined nor any document was marked before the Tribunal.

5. The Tribunal, after taking note of the oral evidence of P.W.1 and Exhibit P.1-Copy of F.I.R., Ex.P.2-Rough Sketch, held that the accident occurred only due to the rash and negligent driving of the 1st respondent's vehicle viz., autorickshaw and consequently, fixed the liability on the 2nd respondent/Insurance Company.

6. The Tribunal taking note of oral evidence of P.W.2-Doctor and the documentary evidence Ex.P.3, P.4, P.7, O.P.Chits issued by Government KMC Hospital, Chennai, and Ex.P.8-Discharge Summary, Ex.P.11, 13, 14, 15 - Scan and Radiology Reports, Ex.P.18-Disability Certificate, fixed the disability at 25%. The Tribunal also pointed out that to prove the avocation and income, no document is filed, however, fixed the income of the Petitioner at Rs.3,000/- per month. On that basis, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl.N o.	Head	Amount granted by the Tribunal
1	Loss of income	Rs. 9,000/-
2	Transport to Hospital	Rs. 5,000/-
3	Extra Nourishment	Rs. 5,000/-
4	Medical Expenses	Rs. 15,200/-
5	Pain and suffering	Rs. 10,000/-
6	Permanent disability	Rs. 25,000/-
	Total	Rs. 69,200/-

7. Challenging the said award, the Petitioner/Claimant has come forward with this appeal seeking enhancement of the award amount. The learned counsel for the appellant/claimant contends that the award passed by the Tribunal is on the lower side and the disability of the victim should have been fixed at 30% as per the evidence of P.W.2-doctor instead of 25% fixed by the Tribunal. It is further contended by the learned counsel for the appellant that the award amount granted under the head "disability" is very low and the Tribunal ought to have awarded Rs.80,000/- as per the claim and on the basis of expert evidence of P.W.2. It is further contended by the learned counsel for

the appellant/petitioner that the amount awarded under the head "loss of earnings" and towards "Pain and suffering" is very low and seeks for enhancement of the Award passed by the Tribunal.

8. Per contra, the learned counsel for the 2nd respondent/Insurance Company contended that the Tribunal has rightly appreciated the material evidence placed before it and there is no ground made out by the appellant to set aside the award passed by the Tribunal.

9. According to the injured Petitioner, the accident occurred only due to the rash and negligent driving of the 1st respondent vehicle and he suffered grievous injuries. It is clear from Ex.P.1-FIR and Ex.P.2-Rough Sketch that the accident occurred due to rash and negligent driving of the Auto driver/1st respondent vehicle as claimed by the Petitioner. The oral evidence of P.W.1 is not contradicted by any other evidence. Thus the finding of the Tribunal that the accident occurred only due to rash and negligent driving of the above said vehicle is just and proper.

10. It is clear from the medical records viz., Ex.P.3, P.4, P.7, OP Chits issued by Government KMC Hospital, Chennai, and Ex.P.8-Discharge Summary, Ex.P.11, 13, 14, 15 - Scan and Radiology Reports, Ex.P.18-Disability Certificate that the Petitioner underwent treatment as inpatient at Government KMC Hospital, Chennai, from 16.06.2006 to 22.06.2006 and had taken inpatient treatment at Government General Hospital for Parkinsonism disease from 12.10.2009 to 17.10.2009. Ex.P.8 Discharge summary clearly establishes the fact of continuous treatment undertaken by the Petitioner. P.W.2-doctor has given Ex.P.18-Disability Certificate and it is clear from it that the injured petitioner suffered permanent disability at 30%. It is also noticed from medical records and oral evidence of P.W.2 that the Petitioner suffered compression fracture and other injuries. Taking into consideration all the above said facts, the Tribunal has fixed disability at 25%. There is nothing on record to discredit the said finding.

11. The age of the victim is stated to be 68 in Ex.P.3. However, P.W.2 claims that his age was 60 at the time of accident. The trial court has fixed the age between 60 to 65 as per the medical records, which also found to be just and proper.

12. The petitioner has not let in any oral or documentary evidence in support of his claim with regard to income. In such circumstances, the Tribunal has fixed Rs.3,000/- as monthly income of the Petitioner and awarded Rs.9,000/- under the head "Loss of income" for the period of 3 months treatment undergone by the petitioner, which, is a just compensation.

13. Considering the nature of injuries suffered by the Petitioner, it would be appropriate to award Rs.10,000/- towards "Extra Nourishment" instead of Rs.5000/- awarded by the Tribunal. Likewise, towards medical expenses, it would be appropriate to award Rs.16,000/- instead of Rs.15,200/- awarded by the Tribunal.

14. As far as Permanent disability is concerned, for the 25% disability, it will be appropriate to award compensation at the rate of Rs.2000/- per percentage of disability. Hence, under the head "Permanent disability", the award of Tribunal is modified to Rs.50,000/-, instead of Rs.25,000/-.

15. For the above said reasons, the Award of the Tribunal is modified as follows:-

Sl.No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of income	Rs. 9,000/-	Rs. 9,000/-
2	Transport to Hospital	Rs. 5,000/-	Rs. 5,000/-
3	Extra Nourishment	Rs. 5,000/-	Rs.10,000/-
4	Medical Expenses	Rs. 15,200/-	Rs.16,000/-
5	Pain and suffering	Rs. 10,000/-	Rs.10,000/-
6	Permanent disability	Rs. 25,000/-	Rs.50,000/-
	Total	Rs. 69,200/-	Rs.1,00,000/-

In the result, the Civil Miscellaneous Appeal is Partly Allowed as stated infra:-

- (i) The award of the Tribunal is modified to Rs.1,00,000/- from Rs.69,200/-
- (ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.
- (iii) In view of the above modified award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of three months from the date of receipt of a copy of this order.
- (iv) On such deposit, the appellant/injured claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The

Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

(v) There will be no order as to costs in this appeal.

Sd/-
Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

nvsri

To

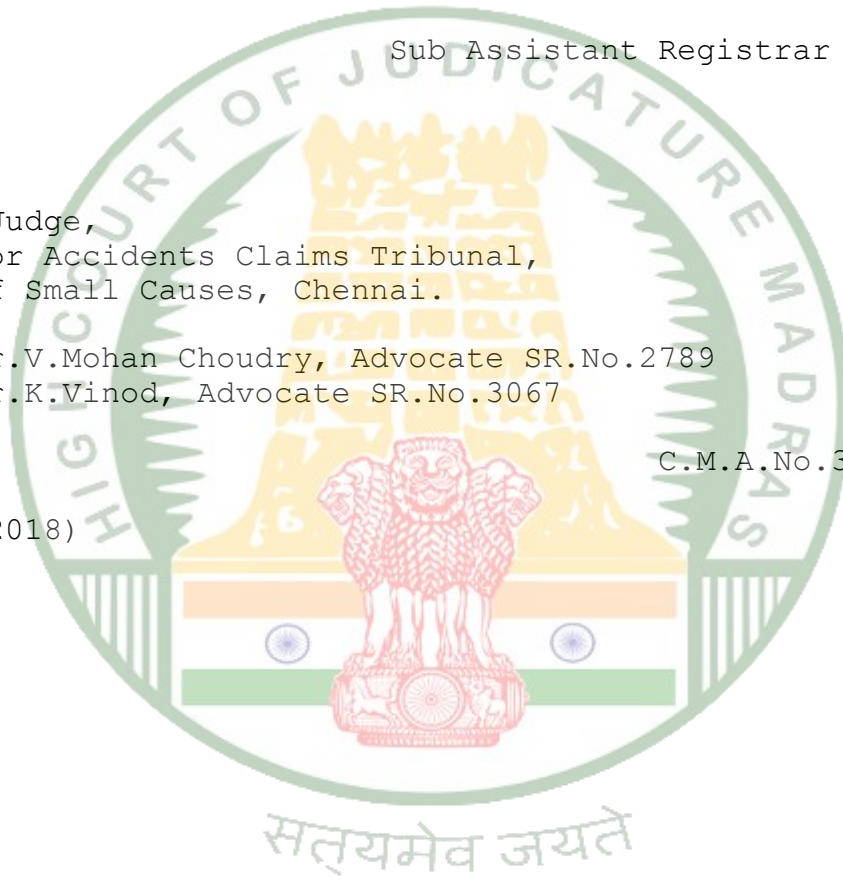
1.The IV Judge,
The Motor Accidents Claims Tribunal,
Court of Small Causes, Chennai.

+2cc to Mr.V.Mohan Choudry, Advocate SR.No.2789

+1cc to Mr.K.Vinod, Advocate SR.No.3067

C.M.A.No.3382 of 2011

GJII(CO)
GN(21/02/2018)



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