

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR  
AND  
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.899 OF 2015

Rizwan N Lalani

... Appellant

Versus

1.V.Prabhakaran  
(R1- was set Exparte in the Trial Court)

2.United India Insurance Co. Ltd.,  
No.64, Armenian Street,  
Chennai - 600 001.

Serviced at  
United India Insurance Co. Ltd.,  
Motor Third Party Claims - Hub  
Silingi Buildings,  
No.134, Greams Road,  
Chennai - 600 006.

... Respondents

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.11.2014 made in MACTOP No.2090 of 2011 on the file of the II Judge, Motor Accidents Claims Tribunal (Court of Small Causes) Chennai.

For Appellant : Mr.M.Swamikannu

For Respondent -2 : Mr.J.Michael Visvasam

J U D G M E N T

(JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

Having not satisfied with the award of compensation, dated 25.11.2014, passed by the learned II Judge, Motor Accident Claims Tribunal (Court of Small Causes) Chennai, in MACTOP No.2090 of 2011, the appellant / claimant has filed the present Civil Miscellaneous Appeal.

2. The appellant / claimant was working as a Customer Service Professional at M/s.Sitel India Limited, City Centre, Mylapore, Chennai and was earning a sum of Rs.1,75,000/- per annum. While he was travelling as a passenger in the first respondent's Car bearing Registration No.TN22-BL-5719 on 01.05.2011, the Car met with an accident due to the rash and negligent driving of the driver of the Car. The first respondent is the owner of the Car. The first respondent has insured the Car with the second respondent. Having suffered left parietal comm united - depressed fracture, right frontal hemorrhagic contusion and anterior interhemispheric bleed with SAH, the appellant / claimant had undergone surgery on 03.05.2011. Disability certificate was issued by P.W.2 - Dr.Amarnath R Sowlee and the same was marked as Ex.P10. The appellant / claimant was 23 years of age at the time of accident. He filed a claim petition seeking compensation of a sum of Rs.24,00,000/-.

3. The Tribunal has relied on the documents marked by the appellant / claimant, as well as by the respondents. On the question of negligence, the Tribunal, on the basis of Ex.R4 - R.C. Book, Ex.R5 - copy of permit for first respondent's vehicle, Ex.R6 - copy of insurance policy, had come to the conclusion that the driver of the first respondent's Car did not possess a valid driving licence to drive a Tourist cab. Therefore, negligence was attributed to the driver of the first respondent.

4. The Tribunal has considered the loss of earning on the basis of the income shown vide Ex.P6 - pay slip for the month of April 2011, wherein, the gross income was shown as Rs.14,418/-. Considering the deductions, the Tribunal has fixed the monthly income as Rs.10,000/- and awarded a sum of Rs.30,000/- for three months. The Tribunal has also awarded Rs.10,000/- towards transportation; Rs.15,000/- towards extra nourishment; Rs.20,000/- towards medical expenses; Rs.10,000/- towards attender charges; Rs.15,000/- towards loss of amenities; Rs.35,000/- towards pain and sufferings; Rs.25,000/- towards mental agony; and Rs.1,000/- towards damages. The Tribunal has assessed the disability as 20% as per Ex.P10 issued by the Doctor and awarded compensation of Rs.40,000/- [20 X 2000]. The total compensation was fixed at Rs.2,01,000/-.

5. As per the judgments of the Supreme Court, the Tribunal has awarded the compensation and directed the second respondent to pay the same to the appellant / claimant initially and recover the same from the first respondent. Accordingly, the amount was directed to be paid along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, along with costs and expenses.

6. The appellant preferred this appeal on the ground that the Tribunal has erred in not awarding reasonable and sufficient compensation as claimed by him. For loss of income suffered by him for six months, it was granted only for a period of three months, that too, without considering his annual income at Rs.1,75,000/-. The award in respect of extra nourishment, transportation, medical expenses, attender charges, loss of marital prospects, loss of amenities and pain and suffering etc., aggrieved by the lesser compensation, the appellant claims Rs.16,00,000/- more to be awarded.

7. We have heard the learned counsel for the parties and perused the materials available on record.

8. The Tribunal has relied on Ex.P6 - pay slip which reflects a sum of Rs.14,418/- as monthly salary of the appellant. However, considering the perks precedent, has fixed monthly income at Rs.10,000/- and calculated the loss of income at Rs.30,000/-. When there is a clear document filed by the appellant himself shows that his salary was only Rs.14,418/-, the Tribunal after considering the exhibits, has rightly fixed quantum under this head. Further, the appellant has suffered fractures and at the maximum, could have been prevented from attending his work, for a maximum period of three months. As contended by the appellant that there were multifarious fractures in the skull leading to the blood clotting and contusion of brain is not proved by suitable evidence. Therefore, when award of compensation is made only for the fractures suffered by him, the period of treatment taken into account by the Tribunal is very reasonable and therefore, we are not inclined to interfere with the award under the head loss of income. The Tribunal has also awarded a sum of Rs.10,000/- towards attender charges. The appellant himself has pleaded in the grounds raised in this appeal that he was attended by his family members continuously for more than six months. If any person is attended by his family members, it cannot be said that they were paid for the care taken by them to their kith and kin. Attender charges is given to someone who was employed by the patient for assisting during the period of treatment. The Tribunal has fixed three months as a period of treatment for the fractures suffered by the appellant and awarded Rs.10,000/- under this head. Even when somebody's assistance was taken on payment, the appellant could have paid maximum a sum of Rs.3,000/- per month. For three months period, it will work out to Rs.9,000/-. In such circumstances, the award towards attender charges at Rs.10,000/- is not lesser, but reasonable.

9. The appellant vide Ex.P5 had produced medical bills for a sum of Rs.12,327/-. Considering the injuries suffered by the appellant, the Tribunal awarded a sum of Rs.20,000/-. Without filing any document, such as medical bills and hospital bills, etc., the appellant cannot claim excessive amount on notional basis. The Tribunal, relying on the documentary evidence, has awarded a sum of Rs.20,000/- under this head, which is just and reasonable. The Tribunal has also awarded a sum of Rs.15,000/- towards extra nourishment and Rs.10,000/- towards transportation. We do not find any infirmity in the award made under the heads of extra nourishment, transportation and attender charges.

10. The appellant claimed a sum of Rs.2,75,000/- towards loss of proper marital alliance. In cases of amputation or immobilization, it is difficult to get suitable match, whereas, in the case of fracture, one cannot expect that a person who has suffered fracture, could not get any proper marital alliance. The appellant has not shown any deformity visible on his body depriving him of a suitable marital alliance. In the absence of any material, the Tribunal is correct in denying compensation under this head. The Tribunal has rightly awarded a sum of Rs.15,000/- towards loss of amenities of life; Rs.35,000/- towards pain and suffering; Rs.25,000/- towards mental agony. In a case of fracture, the award is very much reasonable and the claim made by the appellant at Rs.2,25,000/-; Rs.3,25,000/- and Rs.1,50,000/- under the above heads are very excessive.

11. To sum up, the Tribunal has perused all the documents in proper perspective and awarded a just and reasonable compensation and therefore, we are not inclined to interfere with the award passed by the Tribunal. Accordingly, the award dated 25.11.2014, passed in M.C.O.P.No.2090 of 2011, by the learned II Judge, Motor Accidents Claims Tribunal (Court of Small Causes) Chennai, is upheld.

12. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

TK

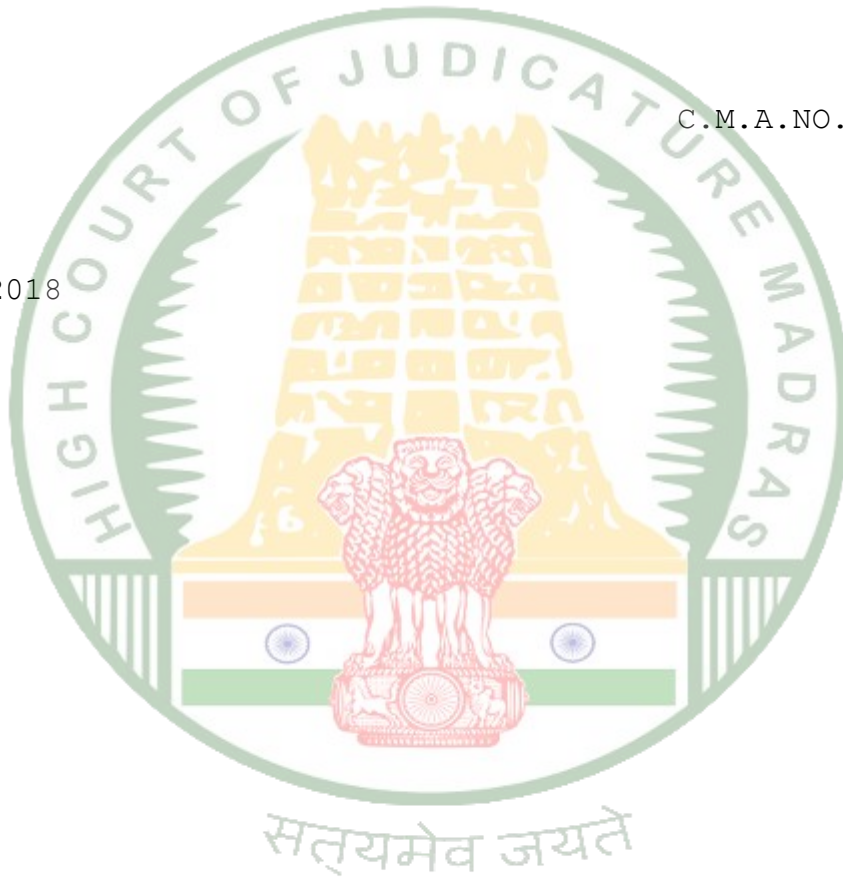
To

The II Judge  
Motor Accidents Claims Tribunal  
(Court of Small Causes)  
Chennai.

+lcc to M/S.M.Swamikkannu, Advocate Sr.61121  
+lcc to Mr.J.Michael Visuvasam, Advocate Sr.60838

C.M.A.NO.899 OF 2015

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