

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2345 of 2017

Palani

..Appellant/Petitioner

Versus

1. Saravanan

2. The Divisional Manager,  
The United India Insurance Co.Limited,  
No.46, Katpadi Salai,  
Vellore.

..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.06.2010 in M.A.C.T.O.P.No.353 of 2005 on the file of Motor Accident Claims Tribunal and Principal Sub Judge, Tiruvanamalai.

For Appellant : Mr. M.Malar

For Respondents : Mr. D.Bhaskaran [ for R2]

J U D G M E N T

The appellant/claimant has come forward with this appeal against the judgment and decree dated 18.06.2010 in M.A.C.T.O.P.No.353 of 2005 on the file of Motor Accident Claims Tribunal and Principal Sub Judge Tiruvanamalai.

2. Heard the learned counsel for the appellant and the learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance Company.

3. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal.

4. The petitioner/claimant states that on 13.08.2004 at about 10a.m. while he was riding his bicycle towards Thiruvannamalai near Muthammal Nagar junction, vehicle bearing Registration No.TN-25D-1986, belonging to the 1<sup>st</sup> respondent and insured with the 2<sup>nd</sup> respondent, came from behind at high speed

and dashed against the petitioner herein. Consequently, the petitioner suffered grievous injury and he took treatment in G.H. Thiruvannamalai and also in private hospital. The petitioner worked as agricultural coolie and earned a sum of Rs.4,000/- per month. Due to the accident and the grievous injuries suffered by him, the petitioner is now unable to attend his work. Hence, the petitioner seeks compensation of Rs.1,00,000/- .

5. On the other hand, opposing the petition the 2<sup>nd</sup> respondent/Insurance Company contends that the petitioner is to establish his avocation, income, age and all other factors alleged by him. Further contention of the 2<sup>nd</sup> respondent is thus as the driver of the 1<sup>st</sup> respondent vehicle was not having valid licence at the time of the accident, they are not liable to pay any compensation. Further, the claim of the petitioner that the negligence of the 1<sup>st</sup> respondent driver alone caused accident is to be substantiated. Thus the 2<sup>nd</sup> respondent seeks for dismissal of the petition.

6. Before the tribunal, the petitioner examined himself as P.W.1 and the medical witness as P.W.2 and produced Exhibits.P1 to P7 documents to substantiate his claim. The 2<sup>nd</sup> respondent examined one witness and produced Exhibit.R.1 document.

7. The tribunal after considering the oral and documentary evidence placed before it, found negligence of the driver of the 1<sup>st</sup> respondent vehicle alone was the reason for the accident and awarded a sum of Rs.77,000/- as compensation. The tribunal also held that the respondents are jointly and severally liable to pay the said amount.

8. The petitioner/claimant not satisfied with the quantum of compensation awarded by the tribunal has come forward with this appeal contending that the tribunal failed to consider the age of the petitioner and monthly income earned by him properly. The tribunal erred in fixing the monthly income of the petitioner at Rs.3,000/- instead of Rs.4,000/-. The petitioner also contented that he has suffered grievous injuries including fracture of type 3 and the same has not been properly considered by the tribunal. The petitioner also contended that the amount of compensation awarded under different conventional heads by the tribunal is very low and the same needs to be enhanced. Hence, the petitioner seeks to allow the appeal and enhance the compensation amount awarded by the tribunal.

9. On the other hand, opposing the petition, the learned counsel for the 2<sup>nd</sup> respondent/Insurance Company contends that the claim of the petitioner is false and the award granted by the tribunal is in order and the same need no interference.

Thus, the 2<sup>nd</sup> respondent seeks dismissal of the appeal.

10. The contention of both sides, as well as the oral and documentary available on record was thoroughly examined by this Court. It is evident from Ex.P.1 that the accident occurred only due to negligence of the 1<sup>st</sup> respondent vehicle driver. It is also evident from Ex.P2 that the accident did not occur due to any mechanical defect. The petitioner produced Ex.P5 Insurance Policy to prove the fact of 1<sup>st</sup> respondent vehicle being insured with the 2<sup>nd</sup> respondent. There is no contra evidence on the side of the respondent to disprove the same. In such circumstances, in view of Ex.P1 and also the oral evidence of P.W.1 the injured petitioner, it is clear that the accident occurred only due to the negligence of the 1<sup>st</sup> respondent vehicle driver.

11. It is also clear that the 1<sup>st</sup> respondent vehicle was insured with the 2<sup>nd</sup> respondent as evidenced by Ex.P5, Insurance Policy. It is the contention of the 2<sup>nd</sup> respondent that the driver of the vehicle was having only learning driver licence at the time of the accident and as such they are not liable to pay any compensation. However, as rightly pointed out by the tribunal, it is clear, following the Apex Court ruling reported in 2004 ACJ Supreme Court, that even if a person was holding learning driver licence only that is sufficient and the Insurance Company is liable to pay the compensation. Thus, the contention of the 2<sup>nd</sup> respondent that they are not liable to pay compensation, since the driver of the 1<sup>st</sup> respondent vehicle was having only leaning driver licence is to be negated.

12. The petitioner being not satisfied with the quantum of the award has come forward with this appeal. According to him, his monthly income was Rs.4,000/- and his age being 40 years, the tribunal ought to have granted him much higher compensation. It is clear from P.W.1 evidence that he used to work every day of the month and provide to his family Rs.3,000/- per month. Taking note of P.W.1 evidence and also considering the fact of shortage agricultural worker, this Court is inclined to fix the monthly earning of the petitioner of Rs.3,500/-. The petitioner was treated as inpatient for 11 days. Considering the nature of injuries suffered by him as evidenced by Ex.P.4 AR Copy and Ex.P3 wound certificate, the petitioner could not have worked for five months and consequently suffered loss of income. It is evident from Ex.P6, disability certificate that the petitioner has suffered 30% permanent disability. In such circumstances, taking into consideration, the nature of injuries and permanent disability it would be appropriate to give Rs.60,000/- for the disability suffered by him.

13. In view of the above said discussions, this Court is inclined to modify the amount awarded by the tribunal under different heads as follows:-

| Sl. No. | Head                | Amount granted by the Tribunal | Amount granted by this Court |
|---------|---------------------|--------------------------------|------------------------------|
| 1       | Transportation      | Rs. 2,000.00                   | Rs. 4,000.00                 |
| 2       | Extra nourishments  | Rs. 2,000.00                   | Rs. 4,000.00                 |
| 3       | Damage of clothes   | ---                            | ---                          |
| 4       | Loss of Income      | Rs. 6,000.00                   | Rs. 15,000.00                |
| 5       | Pain and Sufferings | Rs. 5,000.00                   | Rs. 15,000.00                |
| 6       | Disability          | Rs.60,000.00                   | Rs. 60,000.00                |
| 7       | Attender Charges    | Rs. 2,000.00                   | Rs. 2,000.00                 |
| 8       | Loss of Amenities   | ---                            | ---                          |
|         | Total               | Rs.77,000.00                   | Rs.1,00,000.00               |

14. In the light of the foregoing discussion, the award of the Tribunal is modified on the above terms. In the result, the Civil Miscellaneous Appeal filed by the appellant/Claimant is partly allowed as follows:-

(1) The award granted by the Tribunal is enhanced from Rs.77,000 /- to Rs.1,00,000/-.

(2) 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.

(3) In view of the above modified award amount, the 2<sup>nd</sup> Respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest and costs within a period of four weeks from the date of receipt of a copy of this order.

(4) On such deposits, the 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.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

bri

To

1. The Principal Subordinate Judge,  
Motor Accidents Claims Tribunal,  
Tiruvanamalai.

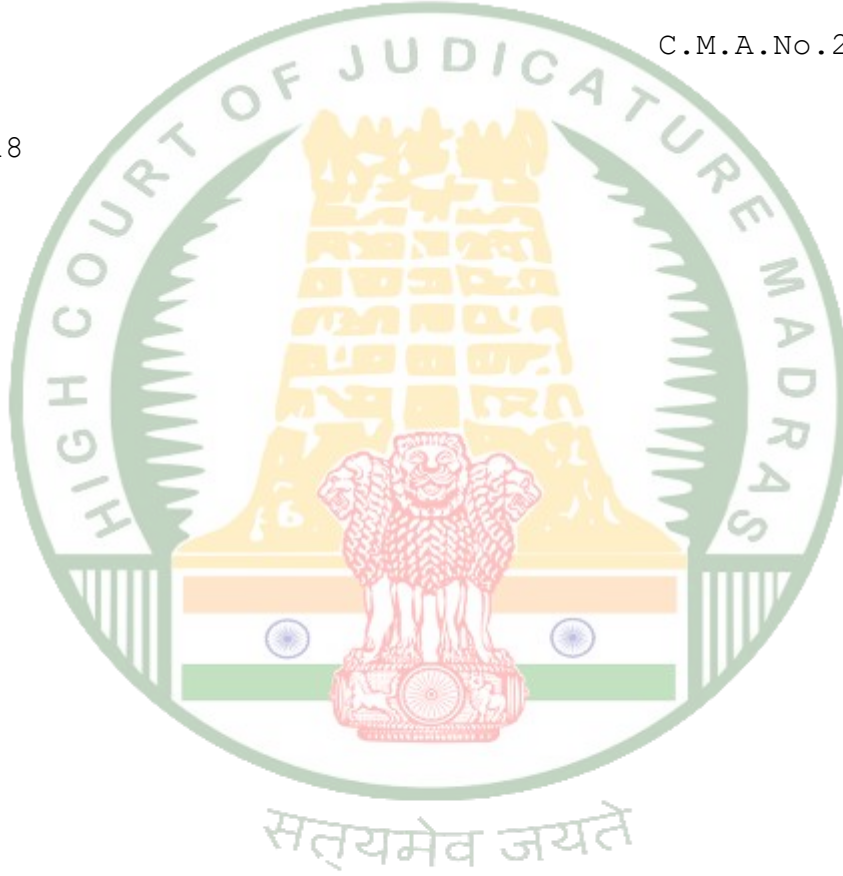
2. The Section Officer,  
V.R.Section, High Court, Madras.

+lcc to Ms.M.Malar, Advocate, S.R.No.4249

+lcc to Mr.D.Bhaskaran, Advocate, S.R.No.4172

C.M.A.No.2345 of 2017

SJ(CO)  
CS/26/02/18



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