

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2560 of 2017

C.Maiyappan

..Appellant/Petitioner

vs

1.S.K.Babu

2.United India Insurance Co.Ltd

Silingi Building

No.134, Greams Road

Chennai-600 006

..Respondents/Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 08.12.2016 made in M.C.O.P.No.3874 of 2010 on the file of Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For appellant : : Mr.A.A.Venkatesan

For Respondents : :

for R1 : : Exparte

for R2 : : Mr.R.Ravichandran

J U D G M E N T

The appellant/claimant has filed this appeal against the judgment and decree dated 08.12.2016 made in M.C.O.P.No.3874 of 2010 on the file of Motor Accident Claims Tribunal, III 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 03.08.2010, at about 12.30 hours, when the petitioner was travelling in an auto bearing Reg.No.AP26-X-3602 at G.N.T.Road, NH-5, Nellore, the driver of the auto drove the same in a rash and negligent manner and overtook an unknown vehicle, thereby, the driver of the auto lost his control and dashed on the lorry, thereby, the petitioner fell down and sustained grievous injuries. The Petitioner claimed total compensation of Rs.10,00,000/-.

3. On the other hand, the 2nd respondent/Insurance Company opposed the Petitioner's claim by stating that the 1st respondent neither informed about the accident nor submitted its claim form. It is further contended that the said Auto was specifically prohibited to ply on the National Highways, but the accident occurred on the National Highways and therefore, there is violation of insurance policy condition. It is further stated that the amount of compensation claimed is highly excessive and sought to dismiss the petition.

4. In support of the claim, the claimant examined P.W.1 and P.W.2 and Exhibits P.1 to P.7 were marked. On behalf of the Insurance Company, R.W.1 was examined and Exhibits R.1 to R.7 were marked.

5. The Tribunal, after taking note of the evidence available before it, held that the Auto driver has violated the permit and hence the 1st respondent has to pay the compensation. However, the petitioner is the 3rd party and he may not be aware of the policy conditions and therefore, the 2nd respondent being the insurer of the 1st respondent's auto and that the insurance policy was subsisting on the date of the accident, is liable to pay the compensation to the petitioner, at first instance, with a liberty to recover the same from the 1st respondent.

6. As far as quantum of compensation arrived at by the Tribunal, it is seen that P.W.2 doctor has assessed the disability of the petitioner at 75%. However, after analysing various aspects, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl.No	Head	Amount granted by the Tribunal
1	Loss of income	Rs. 21,300/-
2	Attender charges	Rs. 7,800/-
3	Transport to Hospital	Rs. 5,000/-
4	Extra nourishment	Rs. 5,000
5	Damage to clothing	Rs. 1,000/-
6	Non pecuniary loss	---
7	Pain and suffering	Rs. 20,000/-
8	Mental and physical shock	Rs. 5,000/-
9	Disability 40% @ Rs.3000/-	Rs. 1,20,000/-
	Total	Rs. 1,85,100/-

7. Aggrieved by the said quantum of compensation arrived at by the Tribunal, the injured claimant/Petitioner has filed the present appeal. The learned counsel for the appellant/Petitioner submits that the Petitioner has sustained fracture of C-4, C-5 and C-6 in the cervical neck and lacerated injury over right leg below knee and surgery was done on 18.09.2010. The petitioner was under treatment and admitted as inpatient from 03.08.2010 to 24.09.2010 in Government General Hospital and thereafter, the petitioner has been continuously taking treatment as outpatient and the same has been proved through Discharge summary marked as Ex.P.3. He further submits that the disability assessed by the doctor is at 75% and the said disability certificate is marked as Ex.P.19, however, the Tribunal has taken only 40% as disability and awarded very meagre amount under the head "disability". Thus the petitioner seeks to entertain the appeal and sought to refix the compensation.

8. Heard both sides and perused the materials available on record. While considering the nature of the petitioner's injury and the evidence of P.W.2 doctor who assessed the disability of the petitioner at 75%, this court is of the considered view that the Tribunal is not right in reducing the percentage of disability and the plea of the Petitioner for just and proper compensation is to be accepted. Accordingly, the loss of income with regard to disability is calculated at the rate of Rs.4500 per percentage, as follows:

$$\text{Rs.4500} \times 12 \times 14 \times 40\% = \text{Rs.3,02,400/-}.$$

Taking into consideration the injuries suffered by the petitioner and the period of treatment and various other attendant circumstances, this court is inclined to grant Rs.40,000/- as compensation under the head "pain and suffering", instead of Rs.20,000/-. As far as the award granted by the Tribunal under other heads is concerned, the same is just and proper and therefore, it is confirmed.

9. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl.No	Head	Amount granted by the Tribunal	Amount granted by this court
1	Loss of income	Rs. 21,300/-	Rs.21,300/-
2	Attender charges	Rs. 7,800/-	Rs. 7,800/-
3	Transport to Hospital	Rs. 5,000/-	Rs. 5,000/-
4	Extra nourishment	Rs. 5,000	Rs. 5,000/-
5	Damage to clothing	Rs. 1,000/-	Rs. 1,000/-

Sl.No	Head	Amount granted by the Tribunal	Amount granted by this court
6	Non pecuniary loss	---	---
7	Pain and suffering	Rs. 20,000/-	Rs. 40,000/-
8	Mental and physical shock	Rs. 5,000/-	Rs. 5,000/-
9	Disability 40% @ Rs.4,500/- (4500 x 12 x 14 x 40%)	Rs. 1,20,000/-	Rs.3,02,400/-
	Total	Rs. 1,85,100/-	Rs.3,87,500/-

10. In the result, the Civil Miscellaneous Appeal is Partly Allowed with costs as follows:-

- (i) The award of the Tribunal is modified and enhanced to Rs.3,87,500/- from Rs.1,85,100/-.
- (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 proportionate interest and costs, within a period of six weeks from the date of receipt of a copy of this order.
- (iv) On such deposit, the injured claimant is permitted to withdraw the amount awarded as above with accrued interest, 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

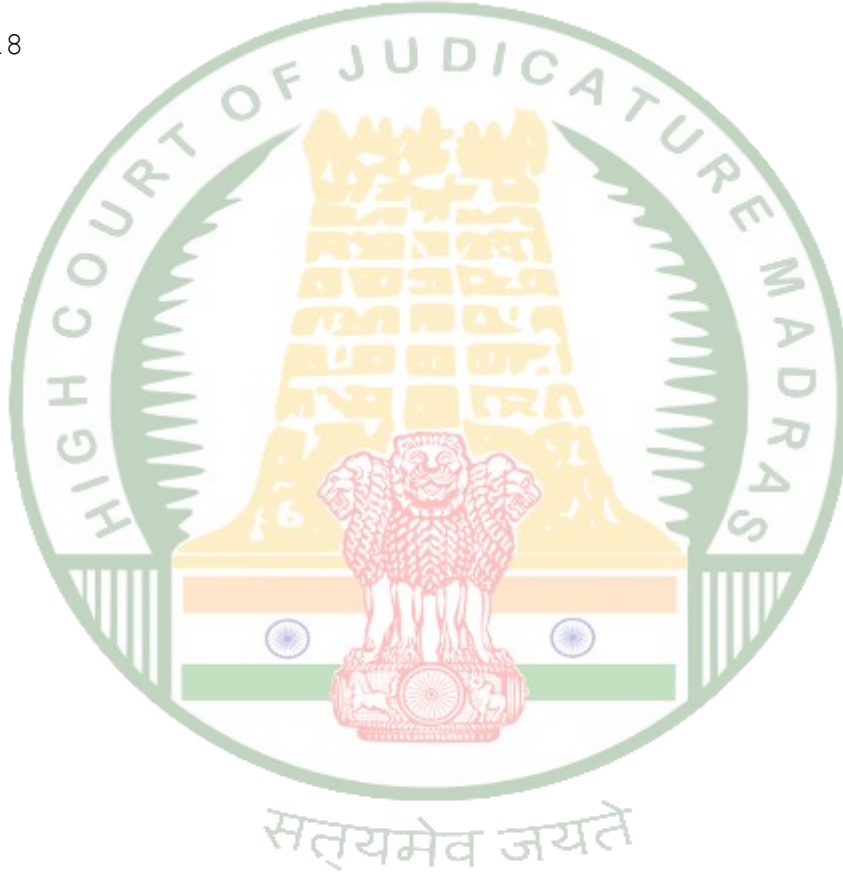
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To

1. The Presiding Officer,
Motor Accidents Claims Tribunal,
III Court of Small Causes, Chennai.
2. The Section Officer,
V.R.Section, High Court, Madras.

C.M.A.No.2560 of 2017

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