

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1006 of 2013

A.Anandhan

... Appellant/Petitioner
..Vs..

1.K.Kabilan

(Remained Exparte before the Trial Court)

2.Cholamandalam MS General Insurance
Company Limited,

No.2, NSC Bose Road, Chennai 1 ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 06.11.2012 in M.C.O.P.No.3074 of 2009 on the file of the Motor Accidents Claims Tribunal, III Judge, Small Causes Court, Chennai.

For Appellant : Mr.R.Kalai Arasan

For Respondents : R1 - Exparte before Claims Tribunal

R2- Mr.N.Vijayaraghavan

JUDGMENT

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai in and by its award dated 06.11.2012, in M.C.O.P.No. 3074 of 2009, the claimant has filed the present appeal, seeking enhancement of the compensation.

2. On 22.07.2009, at about 14.00 hours, when the appellant/claimant was riding a motor cycle, bearing Registration No. TN 09 AL 3732, from Meenambakkam to Vadapalani along GST road from south to north direction along with pillion rider and was nearing Guindy Kathipara Over Bridge, a Tata ACE Van, bearing Registration No.TN 22 AS 6784 belonging to the first respondent, driven by its driver in a rash and negligent manner, came from behind the motor cycle and hit the motor cycle, as a result of which, both the claimant and pillion rider fell down and sustained grievous injuries. Hence, the claimant made a claim petition in a sum of Rs.10,00,000/- as compensation as against the owner of the vehicle/first respondent herein as well as the insurer of the offending vehicle, viz., the second respondent.

3. The first respondent/owner of the vehicle remained absent before the Claims Tribunal, and therefore, he was set ex-parte.

4. The second respondent/Insurance Company, Chennai contested the claim petition by filing a counter statement, inter alia disputing their liability on the ground that the date, time and place of the accident is not admitted. Further, they denied the age, occupation and monthly income of the claimant and the nature of injuries sustained by the claimant. That apart, the owner of the vehicle does not have a valid driving licence. Hence, the second respondent is not liable to indemnify the first respondent and prayed for dismissal of the claim petition.

5. Before the Tribunal, in order to prove the claim, the claimant examined himself as P.W.1 besides examining one Dr.Kalkura as P.W.2 and marked 12 documents as Exs.P.1 to P.12. On the side of the Insurance Company, neither any witness was examined nor any document was marked.

6. The Claims Tribunal, on the basis of both oral and documentary evidence, held that the accident was due to the rash and negligent driving of the Tata Ace Van, belonging to the first respondent/owner, and the second respondent, being the insurer of the offending vehicle, they are liable to pay the compensation. By arriving at such a conclusion, the Tribunal made the calculation under different heads and passed an award for a total sum of Rs.1,04,312/- with interest at the rate of 7.5% per annum from the date of Petition till payment as compensation to the claimant. The break up details of the compensation amount awarded by the Tribunal are as follows:-

S.No	Head	Amount granted
1.	Loss of income	Rs.13,300/-
2.	Transportation	Rs.3,000/-
3.	Extra Nourishment	Rs.5,000/-
4.	Medical expenses	Rs.22,012/-
5.	Damage to clothing	Rs.1,000/-
6.	Pain and sufferings	Rs.10,000/-
7.	Permanent disability	Rs.50,000/-
Total		Rs.1,04,312/-

7. Not being satisfied with the quantum of compensation, the claimant/injured has filed the present Appeal, as already

stated above.

8. Mr.R.Kalai Arasan, learned counsel appearing for the appellant/claimant submitted that though due to the accident, the appellant/claimant was admitted in the Tamil Nadu Dental College and Hospital and Kumaran Dental Clinic, Chennai, and treated as an out-patient, on account of the injuries, 7 sutures were performed on his face. As such, there was a facial disfiguration and hence, he prayed that some reasonable compensation has to be awarded under the head of 'Mental agony'. But, the Tribunal failed to take note of the same. He further submitted that the compensation awarded by the Tribunal under other heads were meager and the Tribunal failed to award compensation under the heads of 'Future Medical Expenses', 'Compensation for Attenders charges', 'Mental agony' and 'Loss of amenities' and thus, seeks for enhancement of the compensation.

9. Mr.N.Vijayaraghavan, learned counsel appearing for the second respondent/Insurance Company fairly submitted that a total sum of Rs.25,000/- may be awarded towards 'Future Medical Expenses', 'Compensation for attenders charges', 'Mental agony' suffered by the claimant due to the facial disfiguration and 'Loss of amenities'. He further submitted that so far as the compensation awarded by the Tribunal under the others heads are concerned, the Tribunal has taken into consideration various aspects and awarded just compensation of Rs.1,04,312/- and the same need not be disturbed at this juncture.

10. In view of the fair admission made by the learned counsel for the second respondent/Insurance Company, and this Court, finding the same to be just and reasonable, is inclined to award a total sum of Rs.25,000/- towards 'Future Medical Expenses', 'Compensation for attenders charges', 'Mental agony' and 'Loss of amenities', and as regards the compensation awarded by the Tribunal under other heads are concerned, the same stands confirmed by this Court. Thus, the revised compensation awarded by this court under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Loss of income	Rs.13,300/-
2.	Transportation	Rs.3,000/-
3.	Extra Nourishment	Rs.5,000/-
4.	Medical expenses	Rs.25,000/-
5.	Damage to clothing	Rs.1,000/-
6.	Pain and sufferings	Rs.10,000/-
7.	Permanent disability	Rs.50,000/-

S.No	Head	Amount granted
8	Future Medical Expenses, Attenders Charger, Loss of Amenities and Mental Agony due to facial disfiguration	Rs.25,000/-
Total		Rs.1,32,300/-

Thus the appellant/claimant is entitled to a sum of Rs.1,32,300/- together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of deposit.

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.1,04,312/- to Rs.1,32,300/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv) The second respondent/Cholamandalam MS General Insurance Company Limited is directed to deposit the entire amount awarded by this Court equally along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimants bank account through RTGS within a period of two weeks thereon.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

vkr

To

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

2.The Section officer

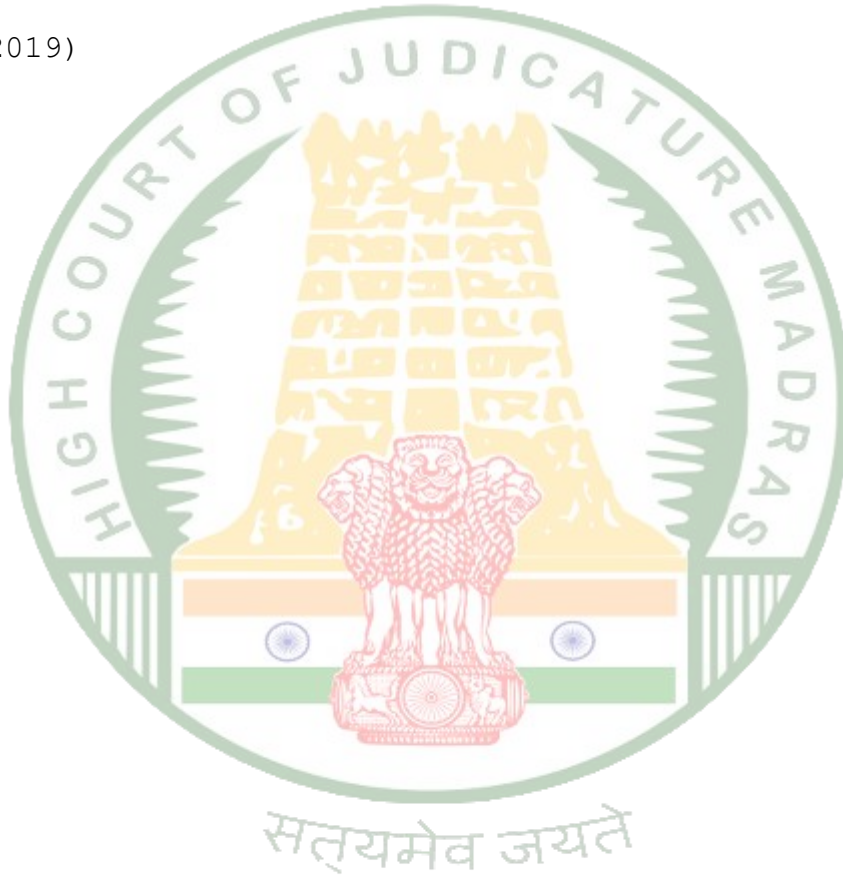
VR Section, High Court, Madras 104.

+1 CC to Mr.N.M.Muthuraja, Advocate sr 24998.

+1 CC to Mr.M.N.Vijayaraghavan, Advocate sr 25900

C.M.A.No.1006 of 2013

KK(CO)
SP(10/06/2019)



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