

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal Nos.2156 of 2007

Shanmugam

Appellant /Claimant

Vs

1. R.Jagadeesan

2. The New India Assurance Co. Ltd
Parimalam Complex
Mettur Road
Erode - 11.

Respondents/Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 11.10.2006 passed in M.C.O.P.No.87 of 2006 on the file of the Motor Accident Claims Tribunal, II Additional Subordinate Court, Erode.

For Appellant : Mr.K.Govi Ganesan

For Respondents: R1- No appearance

R2- Ms.R.Sree Vidhya

J U D G M E N T

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The Civil Miscellaneous Appeal is preferred by the claimant/appellant as against the award passed by the Claims Tribunal to the tune of Rs.21,750/- for the injuries sustained by him in a Motor accident that occurred on 10.07.2005.

2. The brief facts of the case are that on 10.07.2005, at about 8.30 pm, when the claimant was travelling in a lorry bearing Reg.No.TN 37 B 3499, insured with the 2nd respondent Insurance Company, as a load man, the driver of the lorry/1st respondent herein drove the said lorry in a rash and negligent manner in Uthukuli to Vijayamangalam Road and dashed against a tar-mixing machine. Due to the said accident, the claimant sustained injuries all over the body, especially in his left leg Calcaneum bone. Stating that the accident had happened due to the negligent driving of the first respondent, the claimant has filed a petition seeking compensation.

3. The Tribunal based on the documents produced and evidence adduced, has fixed the liability on the 2nd respondent Insurance Company and awarded the Compensation of Rs.21,750/- with the following break up details.

S.No	Head	Compensation (in.Rs.)
1.	Towards Medical expenses	750.00
2.	Towards Transportation Expenses	1,000.00
3.	Towards loss of future earnings	10,000.00
4.	Towards pain & sufferings and mental agony	10,000.00
Total		21,750.00

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4. Heard both sides.

5. The learned counsel for the appellant/claimant submitted that the appellant has not disputed the findings rendered by the Tribunal on negligence, but disputed the findings on quantum. He submitted that the award passed by the Tribunal on quantum is extremely low and it needs significant enhancement.

6. Per contra, the learned counsel for the 2nd respondent Insurance Company contended that the appellant is a gratuitous passenger and as such, he is not entitled to claim any compensation.

7. This Court considered the rival submissions and perused the materials available on record.

8. A perusal of the award of the Tribunal would go to show that the Tribunal has taken into consideration Rule 238 of the Tamil Nadu Motor Vehicles Rules 1989 and drawn adverse inference on goods carry vehicle, thereby, nullifying the contention of the Insurance Company. Further, the Tribunal has discussed in detail about the evidence adduced on the appellant's side and rendered its findings that the accident had occurred due to the rash and negligent driving of the driver of the lorry, insured with the 2nd respondent. This Court is of the opinion that the said findings are based on the evidence available on record and documents marked, which do not require any interference.

9. As far as quantum is concerned, it is not in dispute that the appellant's left leg calcaneum bone was fractured and he sustained injuries all over the body. Taking shelter from the evidence of doctor, the Tribunal has observed that the appellant is facing difficulty in squatting and sitting in cross legs and therefore, the disability cannot be said to be less and in fact more. Considering the nature of injury, period of treatment and other ancillary and attendant circumstances, the award passed by the Tribunal under various heads needs significant enhancement. Hence, the award of the Tribunal is re-structured and the modified compensation break-up details are as follows:-

S.No	Head	Enhanced Compensation (in.Rs.)
1.	Medical expenses	750.00
2.	Transportation Expenses	1,000.00

S.No	Head	Enhanced Compensation (in.Rs.)
3.	Loss of future earnings	17,250.00
4.	Pain & sufferings and mental agony	15,000.00
5.	Extra nourishment	5,000.00
6.	Damage to clothes and articles	1,000.00
Total		40,000.00

10. In the result, this Civil Miscellaneous Appeal is partly allowed by enhancing the quantum of compensation from Rs.21,750/- to Rs.40,000/-, which is payable with interest at the rate of 7.5% by the 2nd respondent herein. No costs. The 2nd respondent / Insurance Company shall deposit the enhanced compensation amount, along with interest and costs, as enhanced by this Court, less the amount already deposited, if any, within a period of six weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount to the Savings Bank Account of the claimant / appellant herein, through RTGS, within one week thereafter. It is needless to state that the appellant shall pay the necessary court fee for the enhanced compensation amount before receiving the copy of this judgment.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

सत्यमेव जयते

srk / vrn

To

1.The Motor Accident Claims Tribunal /
II Additional Subordinate Judge
Erode.

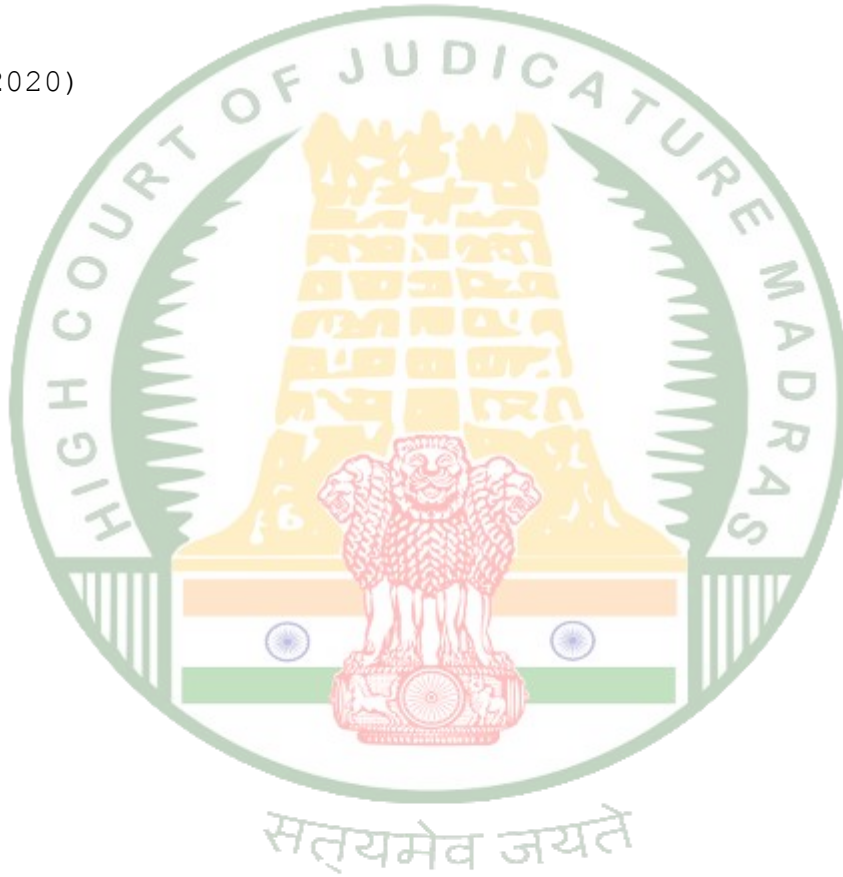
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2. The Section Officer
V.R.Section
Madras High Court
Chennai 104

+1 CC to Mr.K.Govi Ganesan, Advocate sr 54716.
+1 CC to M/s.R. Sreevidya, Advocate sr 55606.

C.M.A.No.2156 of 2007

NRL (CO)
SP(03/03/2020)



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