

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CMA.No.1095 of 2013

Saravanan

... Appellant/Claimant

vs.

1. Prashanth Kumar Shetty
2. Ramesh
3. United India Insurance Co. Ltd.,
Rep.by its Branch Manager,
2, Church Street,
Karaikal. ... Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 11.09.2012 passed in MCOP.No.70 of 2011 on the file of the Motor Accident Claims Tribunal/District Judge, Karaikal.

For Appellant : Mr.S.Sounthar

For Respondents : Mr.J.Chandran for R3
No appearance for R1 and R2

JUDGMENT

The appellant is the claimant in MCOP.No.70 of 2011 on the file of the Motor Accident Claims Tribunal/District Judge, Karaikal. He filed the claim petition under Sections 140 and 166 (1) of the Motor Vehicles Act, 1988 seeking compensation of Rs.4,00,000/- for the injuries sustained by him in a road accident on 09.02.2011.

2. The case of the appellant/claimant in nutshell is as follows:

On 09.02.2011, the claimant was riding his motorcycle bearing Registration No. PY 02 J 7302 with a pillion rider along Thirunallar Main Road and at about 05.30 pm, when he was nearing Kalaiyan Katti Bridge, a speeding TVS Victor motorcycle bearing

Registration No.KA 02 EL 5233 belonging to the second respondent and insured with the third respondent hit him, as a result of which, he fell down and sustained injuries all over his body. According to the claimant, the rash and negligent riding of the rider of the motorcycle bearing Registration No.KA 02 EL 5233, belonging to the second respondent was the cause of the accident and that since the said vehicle was insured with the third respondent/United India Insurance Company, they are jointly and severally liable to pay compensation.

3. The respondents 1 and 2 (rider and owner of the offending vehicle) remained absent before the Tribunal and therefore, they were set exparte. The United India Insurance Company contested the claim petition on all the grounds available to the insured. The learned District Judge/Motor Accident Claims Tribunal, Karaikal after analysing the evidence on record, awarded a compensation of Rs.92,200/- together with interest at the rate of 7.5% per annum to the claimant. Not being satisfied with the award passed by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.S.Sounthar, learned counsel appearing for the appellant/claimant contended that though Dr.Saravanan (PW2) had assessed the partial permanent disability as 35%, the Tribunal has awarded only a sum of Rs.25,000/- towards permanent disability and also awarded very meagre amounts under other heads. He therefore, prayed for enhancement of compensation.

5. Per contra, Mr.J.Chandran, learned counsel appearing for the third respondent/United India Insurance Company contended that the Tribunal had awarded a just compensation of Rs.92,200/- after considering all the aspects of the case and therefore, the same need not be disturbed at this stage.

6. No appearance on behalf of the respondents 1 and 2.

7. A perusal of the records shows that the claimant was a cook in a Hotel at Velankanni. According to him, he was earning a sum of Rs.750/- per day. Since no evidence was adduced to substantiate the same, the notional monthly income is fixed as Rs.7,500/-. Dr.Saravanan (PW2) had assessed the partial permanent disability as 35%. A perusal of the discharge summary (Ex.P8) shows that the claimant had sustained a crush injury on his right foot, second toe. The accident took place in the year 2011. Considering the year of the accident, awarding a sum of Rs.2,000/- per percentage of disability, in the opinion of this Court, would meet the ends of justice and therefore a sum of Rs.70,000/- is awarded towards "partial permanent disability".

The claimant would not have been in a position to attend to his work atleast for three months and therefore, a sum of Rs.22,500/- is awarded towards "loss of income".

8. The award passed by this Court under various heads is extracted hereunder:

S.No .	Head	Amount granted by this Court
1.	Partial permanent disability	Rs. 70,000/-
2.	Pain and sufferings	Rs. 25,000/-
3.	Medical bills	Rs. 29,700/-
4.	Transportation	Rs. 5,000/-
5.	Extra nourishment	Rs. 10,000/-
6.	Attender's charges	Rs. 2,000/-
7.	Damage to clothes	Rs. 500/-
8.	Loss of income	Rs. 22,500/-
	Total	Rs. 1,64,700/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.92,200/- to Rs.1,64,700/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.92,200/- to Rs.1,64,700/-.

(iii) The appellant/claimant is directed to pay court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The third respondent is directed to deposit the enhanced compensation amount i.e., Rs.1,64,700/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.70 of 2011 on the file of the Motor Accident Claims Tribunal/District Judge, Karaikal within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellant/claimant is at liberty to withdraw the same after following the due process of law.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The District Judge,
The Motor Accidents Claims Tribunal,
Karaikal.

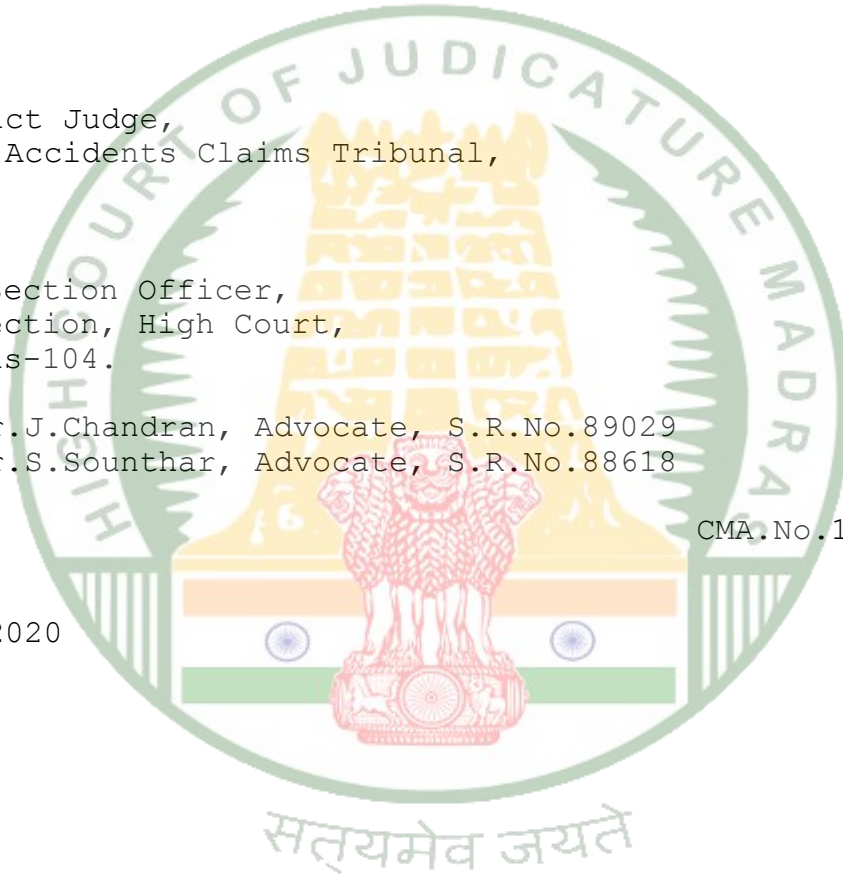
Copy To
The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.J.Chandran, Advocate, S.R.No.89029

+1cc to Mr.S.Sounthar, Advocate, S.R.No.88618

CMA.No.1095 of 2013

SV(CO)
CS/08/10/2020



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