

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.1199 of 2011

K.Thiruvikraman

...Appellant

..Vs..

1.M/s.Shivas Industrial Caterers
India Private Limited,
No.67, 2nd Street, Kamaraj Avenue,
Adyar, Chennai 20.

2.National Insurance Company Limited,
Mamanji Centre, P.B.No.3162,
Thiru vi ka Industrial Estate,
Chennai 32.

... Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 02.12.2010, passed in M.C.O.P.No.2922 of 2008, on the file of the III Small Causes Court, Chennai.

For Appellant : Ms.Sudha

For Respondents: Mr.S.Vadivel for R2

R1- No appearance (Ex-parte)

JUDGMENT

The appellant is the claimant in M.C.O.P.No.2922 of 2008 on the file of the Motor Accidents Claims Tribunal, III Judge, Small causes Court, Chennai. He filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that took place on 09.08.2008 at about 8.30 hours, when he was riding his bicycle along Anna Salai, Little Mount, Chennai.

2.According to the appellant/claimant, a speeding van bearing Registration No.TN 07 AC 1343 belonging to the first

respondent, hit his bicycle, as result of which, he sustained injuries all over his body. He further contended that the rash and negligent driving of the driver of the van bearing Registration No.TN 07 AC 1343 was the cause of the accident and that since the said van was insured with the second respondent, National Insurance Company Limited, both of them are jointly and severally liable to pay compensation to him.

3.The owner of the van bearing Registration No. TN 07 AC 1343 remained absent before the tribunal and therefore, he was set ex-parte. The second respondent, National Insurance Company Limited, contested the claim petition by filing a counter. The learned III Judge, Small Causes Court, Chennai after analysing the evidence on record, held that the driver of the van bearing Registration No. TN 07 AC 1343 was responsible for the accident and awarded a compensation of Rs.65,000/- to the appellant/claimant.

4.Not satisfied with the quantum of compensation awarded by the tribunal, the appellant/claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 seeking for enhancement of compensation.

5.Ms.Sudha, learned counsel appearing for the appellant would contend that the appellant/claimant is a catering contractor earning a sum of Rs.10,000 per month and that he sustained fracture of left humerus bone with dislocation. He further contended that the appellant/claimant took native treatment at Puthur, as per the Outpatient Chit (Ex.P2) and that the tribunal has awarded a very meagre amount of Rs.65,000/- as compensation and that too when Dr.J.R.R.Thiagarajan (Pw2) had assessed the partial permanent disability as 40%. The Compensation awarded by the tribunal under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Partial permanent disability	Rs.40,000/-
2.	Pain and sufferings	Rs.10,000/-
3.	Transportation	Rs.2,000/-
4.	Extra nourishment	Rs.2,000/-
5.	Loss of income	Rs.9,000/-
6.	Medical expenses	Rs.2,000/-
Total		Rs.65,000/-

6. In the instant case, though the appellant/claimant had contended that he is a catering contractor earning a sum of Rs.10,000/- per month, no documentary evidence was adduced by him and therefore, the monthly income of the appellant/claimant is fixed as 4,000/- per month. Ex.P2 shows that the appellant/claimant sustained a fracture of left humerus bone with dislocation and Dr.J.R.R.Thiyagarajan (PW2) had assessed the partial permanent disability as 40%. since the accident took place in the year 2008, awarding a sum of Rs.2,000/- per percentage for disability would meet the ends of justice. The tribunal did not award any amount towards loss of income, especially, when the claimant has sustained a fracture of bones. The claimant would not have been in a position to attend to his routine work atleast for three months and therefore, a sum of Rs.12,000/- (Rs.4,000 x 3) is awarded for loss of income.

7. The Compensation awarded by this court under various heads extracted hereunder:-

S.No	Head	Amount granted
1.	Partial permanent disability	Rs.80,000/-
2.	Loss of income	Rs.12,000/-
3.	Pain and sufferings	Rs.10,000/-
4.	Medical expenses	Rs.2,000/-
5.	Extra nourishment	Rs.5,000/-
6.	Loss of article	Rs.2,000/-
7.	Transportation	Rs.2,000/-
	Total	Rs.1,13,000/-

8. 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.65,000/- to Rs.1,13,000/-.

(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 is directed to pay the entire enhanced compensation amount (less the amount already deposited by them) 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 M.C.O.P.No.2922 of 2008, on the file of the Motor Accident Claims Tribunal, III Small Causes Judge, Chennai within a period of four weeks from the date of receipt of a copy of this order.

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

vkrr

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

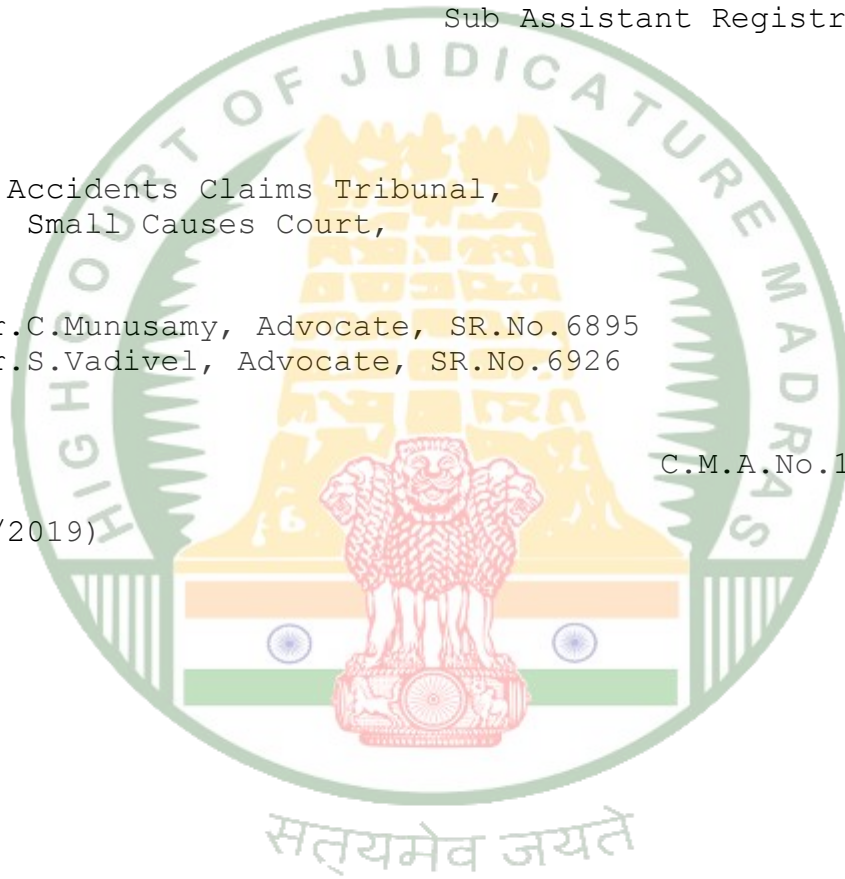
To

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

+1cc to Mr.C.Munusamy, Advocate, SR.No.6895
+1cc to Mr.S.Vadivel, Advocate, SR.No.6926

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Kak(12/06/2019)



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