

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2019

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1233 of 2013

Selvam

.. Appellant/Petitioner

Vs.

1.Sangeethaa Karunakaran

2.Bajaj Allianaz General Insurance Co. Ltd.,
No.25/26, Prince Towers, 5th Floor,
College Road, Chennai - 6. .. Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MACT.OP.No.2235 of 2009 on the file of the XVI Additional Judge, (MACT), Chennai dated 29.10.2012.

For Appellant : Mr.R.Kalaiarasan
For Respondents : R1 - No Appearance
Mrs.R.Rathnathara, R2.

J U D G M E N T

The claimant is the appellant herein, challenged the judgment and decree dated 29.10.2012 made in MACT.OP.No.2235 of 2009 on the file of the XVI Additional Judge, (MACT), Chennai, by raising the following grounds :-

The main ground raised by the appellant is that the Court below has awarded less compensation which is not appropriate and seeks for enhancing the award. The Court below failed to consider the nature of injuries sustained viz., fracture, lacerated wound of scalp, abrasion and head injuries, the injured was treated at Chettinad Hospital, Kelambakkam on 30.03.2009 and at Santhosh Hospital, Besant Nagar, Chennai from 30.03.2009 to 08.04.2009 and continued to be out-patient. The tribunal awarded a sum of Rs.20,000/- towards pain and sufferings as against the claim of Rs.1,25,000/-. For permanent disability the tribunal assessed the disablement at 25% and awarded a sum of Rs.50,000/- at the rate of Rs.2,000/- is not correct. The appellant was working as mason and earning Rs.350/- per day and taking treatment for six months as inpatient. The Tribunal fixed the monthly income at Rs.5000/-

p.m. for three months and awarded Rs.15,000/- is not correct. The Tribunal has granted Rs.25,000/- towards transportation, attender charges and extra nourishment.

2. The case of the appellant is that on 30.03.2009 at about 19.00hours while the petitioner was driving his motor cycle from Kovalm to Therkupattu village in ECR from north to south, the first respondent car bearing Registration No.TN10-V-7948 was driven by its driver rashly and negligently came in wrong direction and hit against the appellant vehicle, thereby the appellant sustained grievous injuries. The appellant was taken to Santhosh Hospital, Chennai and discharged after 10days. Thereafter, the appellant was taking treatment as outpatient for nearly six months. Hence, the claimant claimed a sum of Rs.10lakh towards compensation before the Tribunal.

3. The first respondent filed counter stating that she is the owner of the car Hyundai I10 Magna bearing Registration No.TN10-V-7948, the vehicle has been insured with the second respondent vide Policy No. OG-09-1501-1801-000013910 for the period from 06.10.2008 to 05.10.2009. The vehicle has been insured with the second respondent and at the time of accident the policy is in force, hence, the second respondent is liable to pay the compensation.

4. The second respondent/insurance company filed its counter stating that the claimant drove his vehicle without valid license. The claimant was called upon to file the sketch of the accident spot, to show that the first respondent drove the vehicle in rash and negligent manner. The claim made by the claimant is high and excessive and prays for dismissal of the claim petition.

5. In order to prove the case of the claimant, the claimant examined himself as PW1 and the Doctor who treated the claimant was examined as PW2 and marked Exs.P1 to P14. The respondents neither examined any of the witnesses nor produced any documents.

6. Heard the rival submissions made on both sides and perused the materials available on record.

7. On a perusal of records and documents Exs.P1 to P14 the Court below comes to the conclusion that the accident had occurred beyond reasonable doubt. The driver of the car drove the car in rash and negligent manner and hit against the appellant, thereby the appellant sustained grievous injuries. The Tribunal rightly fixed the liability on the first respondent which has been indemnified by the second respondent and awarded a sum of Rs.1,61,063/- towards total compensation.

8. Aggrieved by the said judgment and decree, the appellant/claimant challenged the same stating that the appellant was working as Mason and earning a sum of Rs.350/-per day, the Court below erred in calculating the income and awarded a meager sum of Rs.15,000/- for three months. The Doctor has assessed the disability with 30%, whereas the Tribunal has reduced the same to 25% and awarded a sum of Rs.50,000/- at the rate Rs.2,000/-per percentage.

9. On a perusal of records, it is seen that the claimant is in hospital for 10days from 30.03.2009 to 08.04.2009 for the injuries viz., fracture - dorsal radius with disruption of distal radio, lacerated wound of Scalp 15x3x2cms over left parietal, injuries in both feet, abrasion over left cheek and hands. The appellant has not shown any material to prove his earning capacity towards loss of income.

10. As per the various decisions, wherein the fixing of disability can vary 5%, the lower Court can reduce to 5%, this Court is not inclined to do so and take 30% towards disability and award a sum of Rs.60,000/- for 30% disability. No document is available to prove the actual income of the claimant, this Court is inclined to consider 15days of work per month and enhanced the award amount from Rs.15,000/- to Rs.20,000/- towards loss of income. On the other heads the Tribunal has rightly considered and awarded a reasonable compensation.

11. This Court after considering the material factors relevant for determination of just and fair compensation is inclined to enhance the compensation as stated below, the enhanced compensation on the disablement and loss of income is as follows :-

Sl.No.	Heads	Amount
1	Disablement	60,000
2	Loss of income	20,000
3	Pain and sufferings	20,000
4	Transportation expenses on attender and extra nourishment	25,000
5	Medical bills	51,063
	Total	1,76,063

12. The compensation of Rs.1,61,063/- is enhanced to Rs.1,76,063/-, the same is rounded off to Rs.1,77,000/-. The same is payable with interest at 7.5% per annum from the date of petition till the date of payment and with proportionate cost. The time for payment of balance amount is eight weeks from the

date of receipt of copy of the Judgment and on such deposit of amount, the injured is permitted to withdraw the entire amount by filing separate cheque application. The Award of the Tribunal remains unaltered in other respects.

13. In the result, the Civil Miscellaneous appeal is partly allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsh

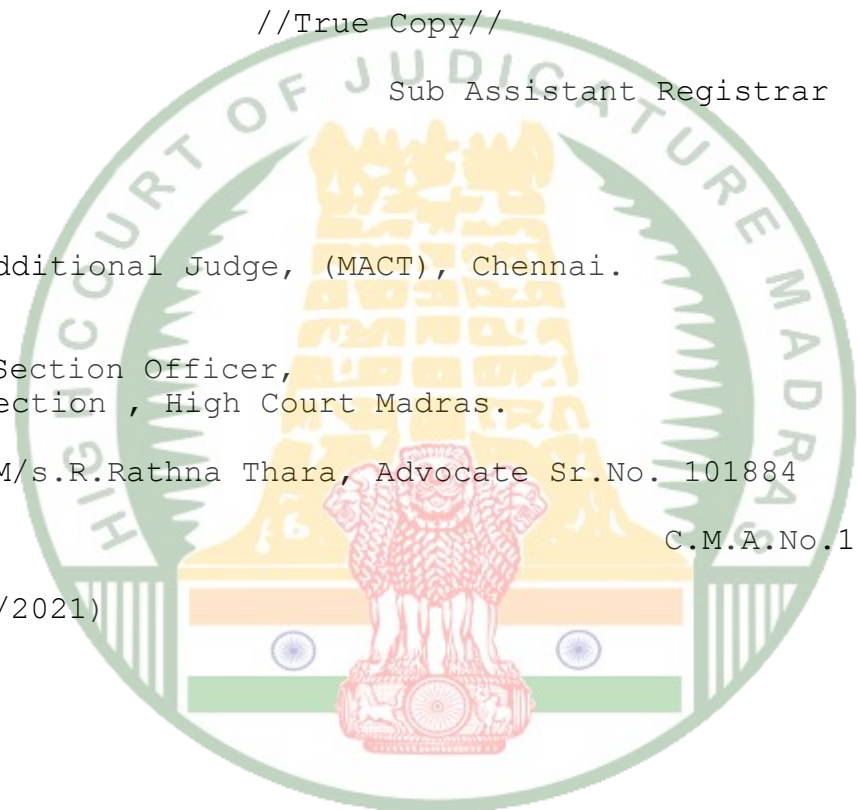
To
The XVI Additional Judge, (MACT), Chennai.

Copy to:
The Section Officer,
VR Section , High Court Madras.

+1 cc to M/s.R.Rathna Thara, Advocate Sr.No. 101884

C.M.A.No.1233 of 2013

VGI (CO)
RMP (27/01/2021)

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