

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1116 of 2015

M.Ashokan alias Ashok

... Appellant

Vs.

1. P.Nagaraj

2. The I.C.I.C.I Lombard General Insurance Company Ltd.,
Zeenath House, Keshavrao Khade Marg,
Mahalakshmi, Mumbai - 400 034.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 08.09.2011 made in M.C.O.P.No.20 of 2009, on the file of the Motor Accidents Claims Tribunal-cum-Principal Subordinate Judge, Krishnagiri.

For Appellant : Mr.M.Selvam

For R2 : Mrs.R.Sreevidhya

J U D G M E N T

The case in brief is as follows:

On 10.02.2008 at about 16.00 hours, the appellant/claimant and one Mahendiran were proceeding in a motorcycle bearing Registration No.TN29-A-5766 as rider and pillion rider respectively on the Pauparapatti - Dharmapuri Road. At that time, a LMV Tractor bearing Registration No.TN27 -X - 9633 belonging to the first respondent and insured with the second respondent, came from the opposite direction in a rash and negligent manner and dashed against the motorcycle. Due to the said impact, the appellant sustained grievous injuries. Stating so, he filed a claim petition, claiming compensation of Rs.15,00,000/-. On consideration of the materials and evidence available on record, the Tribunal has come to the conclusion

that the accident had occurred only due to the rash and negligent driving of the driver of the Tractor and awarded a total compensation of Rs.2,38,400/- with interest at 6% per annum from the date of petition.

2. Feeling aggrieved and being dissatisfied with the quantum so determined by the Tribunal, the appellant/claimant has preferred this appeal seeking enhancement of the same.

3. The learned counsel for the appellant/claimant submitted that the Tribunal has awarded a lesser sum of Rs.60,000/- towards 55% permanent disability; the compensation awarded under other heads are also very meager; and hence, the quantum of compensation needs substantial enhancement.

4. Per contra, the learned counsel for the second respondent/ insurance company submitted that after properly analysing the materials and evidence, the Tribunal has awarded the compensation, which is just and reasonable and hence, the same does not require any interference in the hands of this Court.

5. Heard the learned counsel on either side and perused the materials available on record.

6. This is the claimant's appeal seeking enhancement of the compensation awarded by the Tribunal and hence, there is no requirement for this Court to go into the question on negligence and the liability of the second respondent insurance company to pay compensation.

7. The appellant/claimant himself examined as P.W.1, who deposed that at the time of accident, he was 27 years and was earning Rs.10,000/- as a Building Construction Mastery and Agriculturist. P.W.2/Doctor assessed the disability of the appellant/claimant and issued Ex.A7 disability certificate to the tune of 55%. As per Ex.A2-wound certificate, the appellant/claimant sustained fracture in shaft of right humerus and right shaft of tibia and fibula, besides receiving multiple injury all over the body. The records further disclosed that the claimant initially took treatment at Government Head Quarters Hospital, Dharmapuri and thereafter, at Abhaya Hospital, Bangalore as inpatient from 11.02.2008 to 20.02.2008. Ex.A5 is the medical bill. Placing reliance on those oral and documentary evidence, the Tribunal has awarded Rs.88,400/- towards medical expenses, Rs.60,000/- towards permanent disability, Rs.35,000/- for future medical expenses, Rs.35,000/- towards pain and suffering, Rs.10,000/- towards transportation,

Rs.5,000/- towards extra nourishment and Rs.5000/- towards Attender charges, which in the opinion of this Court, are fair, just and reasonable and the same cannot be excessive or exorbitant, warranting any interference.

8.However, the Tribunal has not awarded any amount towards Loss of earning during the treatment period and loss of amenities. Considering the nature of the injuries and the percentage of permanent disability sustained by the injured and also having regard to the fact that the appellant has been continuously taking treatment, a sum of Rs.10,000/- is hereby awarded towards loss of earning during treatment period, besides awarding Rs.15,000/- towards loss of amenities. Accordingly, the compensation of Rs.2,38,400/- awarded by the Tribunal is enhanced to Rs.2,63,400/-, the breakup details of which, reads as follows:

Head	Compensation awarded by the Tribunal (Rs.)	Compensation enhanced by this Court (Rs.)
Permanent disability at 30%	60,000/-	60,000/-
Medical expenses	88,400/-	88,400/-
Future Medical Expenses	35,000/-	35,000/-
Pain and suffering	35,000/-	35,000/-
Extra nourishment	5,000/-	5,000/-
Transportation	10,000/-	10,000/-
Attendant charges	5,000/-	5,000/-
Loss of earning during the treatment period	--	10,000/-
Loss of amenities	--	15,000/-
Total	2,38,400/-	2,63,400/-

9.In view of the above, the second respondent/Insurance Company is directed to deposit the entire compensation amount, as ordered by this Court, with interest at 6% per annum from the date of claim petition and costs, after deducting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the same to the savings bank account of the appellant/claimant, through RTGS within a period of one week thereafter. It is made clear that the claimant is not entitled to receive interest for the delayed period of 720 days, as per the order of this Court dated 01.04.2015 in MP.No.1 of 2014 in CMA.SR.No.13743 of 2014.

10.In fine, this Civil Miscellaneous Appeal is allowed in part. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

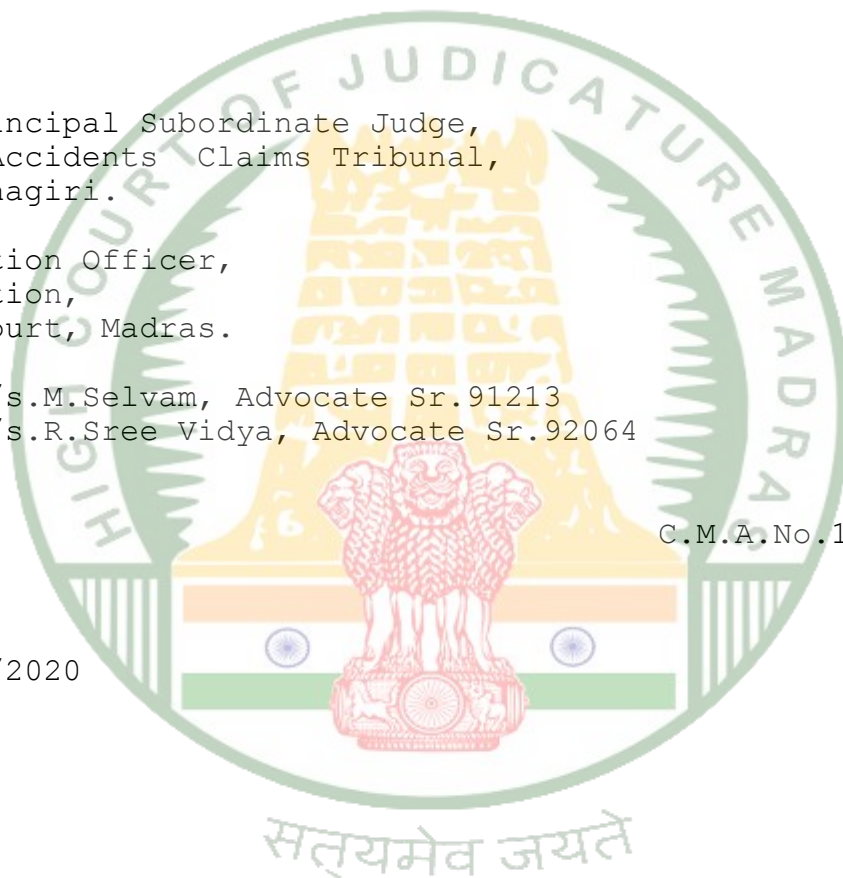
2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to M/s.M.Selvam, Advocate Sr.91213

+1cc to M/s.R.Sree Vidya, Advocate Sr.92064

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