

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.12.2019

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.513 of 2010

M.Navaneetham

..Appellant / Claimant

versus

1.C.A.Jaya Seelan

2.United India Insurance Co. Ltd.,
23/81, Nainiappa Naicken Street,
Chennai - 600 003.

... Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 28.10.2009 passed in M.C.O.P.No.2612 of 2006 on the file of the Motor Accidents Claims Tribunal [Small Causes Court No.II], Chennai.

For Appellant : Ms.P.T.Salim Fathima
For Respondent No.1 : Exparte
For Respondent No.2 : Mr.S.Arun Kumar

J U D G M E N T

Aggrieved over the award passed by the Motor Accidents Claims Tribunal [Small Causes Court No.II], Chennai in M.C.O.P.No.2612 of 2006, the appellant, who is the petitioner in the Claims Petition filed this appeal, in which, he is seeking the relief to enhance the award amount arrived at by the Claims Tribunal.

2. In the Claims Tribunal, the appellant herein had filed the Petition under Section 166 of the Motor Vehicles Act, in which, he claimed a compensation of Rs.6,00,000/-. The first respondent herein is the owner of the Auto Rickshaw bearing Registration No.TN-05-J-1876, which is responsible for the accident. The second respondent herein is the insurer of the said vehicle.

3. After an elaborate enquiry, the Claims Tribunal awarded compensation of Rs.90,000/- with interest @ 9.5% per annum. As against which, the present Appeal has been preferred by the appellant.

4. In the Claims Tribunal, the case of the appellant / petitioner is as follows: On 31.05.2006, at about 02.30 hours, the petitioner was sleeping in front of her house, i.e. Door No.12, N.S.K.Street, Anna Nagar, Korukkapet, on the eastern side of the road. At that time, the Auto Rickshaw bearing Registration No.TN-05-J-1876 came from South to North in N.S.K.Street, in a very high speed, driven rashly and negligently and ran over the petitioner. Due to which, the petitioner sustained multiple fractures and injuries.

5. According to the petitioner, the driver of the Auto Rickshaw bearing Registration No.TN-05-J-1876 is solely and directly responsible for the accident. Since the first respondent is the owner of the vehicle and the second respondent is the insurer, both are jointly, severally and vicariously liable to pay compensation to the injured petitioner with interest and costs.

6. Per contra, opposing the claim made by the petitioner, by filing counter affidavit, the second respondent denied the accident itself and stated that, only due to the rash and negligent act of the petitioner, the accident had occurred. According to him, the age, avocation and income of the petitioner are also denied. The claim of the petitioner is exorbitant and thus, the second respondent sought for dismissal of the Claims Petition.

7. Before the Claims Tribunal, the petitioner examined himself as P.W.1 and the Doctor, who issued Disability Certificate to the claimant was examined as P.W.2 and 4 documents were marked on the side of the petitioner as Ex.P.1 to Ex.P.4. None have been examined on the side of the respondents in order to prove their contentions. The first respondent remained ex parte in the Claims Tribunal.

8. The Claims Tribunal, on the basis of the available records, found that the driver of the Auto Rickshaw bearing Registration No.TN-05-J-1876 alone caused the accident and passed an award for a sum of Rs.90,000/- along with interest @ 9.5% per annum as compensation to the injured [claimant / Navaneetham] and directed the second respondent to pay the compensation. Aggrieved over the said finding, the appellant has come forward with the present Appeal praying to enhance the award amount.

9. When the appeal is taken up for hearing, I have heard the arguments of Ms.P.T.Salim Fathima, learned counsel appearing for the appellant, Mr.S.Arun Kumar, learned counsel appearing for the second respondent and also perused the records carefully.

10. The learned counsel appearing for the appellant [injured] would contend that the Tribunal has failed to appreciate the evidence given by P.W.2 in respect of the percentage of the disability sustained by the claimant. Further, she would contend that the award passed by the Claims Tribunal under various heads are very meager one. Therefore, she prayed for enhancing the compensation fixed by the Claims Tribunal.

11. Per contra, the learned counsel appearing for the second respondent would contend that the Claims Tribunal has properly appreciated the evidence given by the petitioner and on appreciating the relevant documents passed the award, which does not need any interference and thus, the second respondent sought for dismissal of the appeal.

12. On considering both sides arguments, admittedly at the time of accident, the driver of the Auto Rickshaw drove the vehicle in a very high speed. According to the petitioner, in the occurrence place, the driver of the Auto Rickshaw came in a wrong side and dashed against the petitioner. The Police registered a case against the driver of the Auto Rickshaw under Ex.P.1. The oral evidence of P.W.1 and contents of Ex.P.1 clearly arrived that only due to the negligent act of the Auto Rickshaw, the accident had occurred. In order to dispute the same, none have been examined on the side of the respondents. Hence, I am of the considered opinion that the findings arrived at by the Claims Tribunal with regard to the negligence of the Auto Rickshaw does not need any interference and that the

accident had occurred and only due to rash and negligent act of the Auto Rickshaw.

13. In respect to the liability, the second respondent herein, who is the insurer has not put forth any specific case that the owner of the vehicle violated the policy condition. In otherwise, he is not disputed the fact that at the time of accident, the vehicle was insured with him. Therefore, being the insurer, he is liable to pay the compensation, if any fixed in favour of the claimant.

Pecuniary Losses:

14. The appellant claims that she was running a Bunk shop and was earning Rs.4,500/- to 5,000/- per month. The learned counsel for the second respondent vehemently contended that the appellant is not having any job. However, it is admitted that the appellant is only the house wife. The Claims Tribunal, by following the judgment in NATIONAL INSURANCE COMPANY LIMITED vs. MINOR DEEPIKA REP. BY HER GUARDIAN AND NEXT FRIEND RANGANATHAN AND OTHERS reported in 2009 (1) TNMAC 671 came to the conclusion that the appellant would have been disabled from attending her avocation for a period of 4 months and fixed Rs.14,000/- towards Loss of Earnings.

15. Considering the fact that the appellant was residing in the City of Corporation, it cannot be said that the normal income for a house wife is Rs.3,500/- per month. Due to the injuries and disabilities sustained in the accident, she would have been disabled from attending her avocation for a period of 4 months. Therefore, I am of the considered view that the Loss of Earning is fixed as Rs.23,000/-. For Transportation, the Claims Tribunal has awarded Rs.2,000/-. In the year of 2006, on considering the cost living, it cannot be said Rs.2,000/- is sufficient for Transportation. Hence, the award of Transportation is enhanced to Rs.5,000/-. Towards the head of Extra Nourishment, the award of Rs.2,000/- is enhanced to Rs.5,000/-.

16. In respect to Damage to Clothing and Articles, the Claims Tribunal awarded Rs.1,000/-, which is unaltered. However, in respect to the Medical Expenses, Rs.2,000/- is enhanced to Rs.5,000/-. For other expenses, the Claims Tribunal awarded Rs.1,000/-, which is unaltered. Under the head of Disability, the Claims Tribunal awarded Rs.30,000/-. In this regard, as per the evidence given by the Doctor, who issued disability

certificate, the petitioner sustained 50% partial permanent disability, under Ex.P.3 and Ex.P.4 produced by the claimant proves the same. In the said circumstances, since the accident had happened in the year of 2006, Rs.30,000/- is enhanced to Rs.50,000/-. For Pain and Sufferings, the Court below awarded Rs.18,000/- and towards the Loss of Amenities awarded Rs.10,000/-. In this regard, I am of the opinion that since the petitioner sustained 50% partial permanent disability, the said amount awarded by the Claims Tribunal is very meager and therefore, the amount of Rs.18,000/- under the head of Pain and Sufferings is enhanced to Rs.25,000/- and Rs.10,000/- under the head of Loss of Amenities is enhanced to Rs.20,000/-. Finally, in respect to Loss of Expectation, the claims Tribunal awarded Rs.10,000/-, which is correct one. Accordingly, modified compensation payable to the injured [claimant / Navaneetham] is as under:-

Sl. No.	Heads of claim	Tribunal Amount (Rs.)	High Court Amount (Rs.)
1	For 50% Disability	30,000.00	50,000.00
2	Loss of Income	14,000.00	23,000.00
3	Transportation	2,000.00	5,000.00
4	Extra Nourishment	2,000.00	5,000.00
5	Damages to Clothing and Articles	1,000.00	1,000.00
6	Medical Expenses	2,000.00	5,000.00
7	Other Expenses	1,000.00	1,000.00
8	Pain and Sufferings	18,000.00	25,000.00
9	Loss of Amenities	10,000.00	20,000.00
10	Loss of Expectation	10,000.00	10,000.00
	Total	90,000.00	1,45,000.00

17. In the result,

[i] The Civil Miscellaneous Appeal is partly allowed.

[ii] The award amount is enhanced to Rs.1,45,000/- from Rs.90,000/-. The petitioner in M.C.O.P.No.2612 of 2006 is entitled to award amount of Rs.1,45,000/- [Rupees One Lakh Forty Five Thousand only] with 7.5% interest per annum from the date of petition till the date of realisation.

[iii] The second respondent [Insurance Company] is directed to deposit the award amount along with accrued interest and cost with a period of six weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit, the appellant [claimant, Navaneetham] in this appeal is permitted to withdraw the same, by filing necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

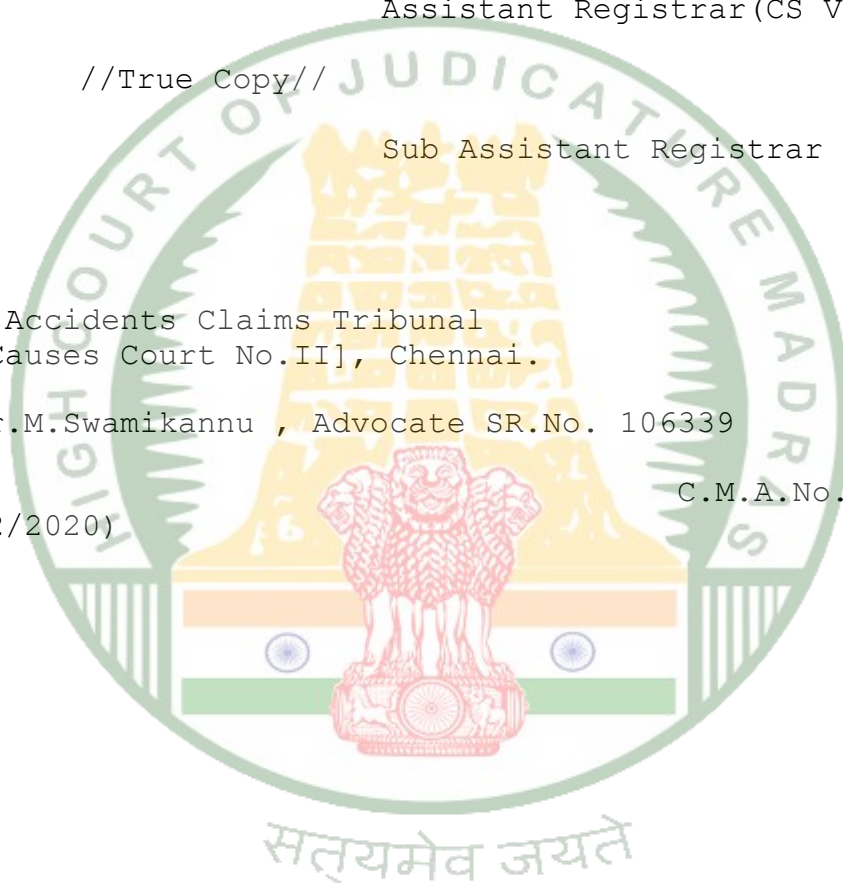
sri
To

The Motor Accidents Claims Tribunal
[Small Causes Court No.II], Chennai.

+1cc to Mr.M.Swamikannu , Advocate SR.No. 106339

A.SK(01/12/2020)

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