

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.03.2019

CORAM:
THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1173 of 2012

K.Chandra Sekaran

...Appellant/Claimant

Versus

1.Manicka Pushparajan

2.IFFCO-Tokio General Insurance Company Ltd.,
No.28, North Usman Road,
T.Nagar, Chennai - 17.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree dated 31.10.2011 made in M.C.O.P.No.5372 of 2005 on the file of Motor Accident Claims Tribunal, (III Court of Small Causes) Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.N.Vijayaraghavan (for R2)
: Exparte - R1

J U D G M E N T

The claimant is the appellant herein, who preferred the appeal as against the award dated 31.10.2011 passed in M.C.O.P.No.5372 of 2005 on the file of Motor Accident Claims Tribunal, (III Court of Small Causes) Chennai, seeking enhancement of compensation.

2.Since the present appeal has been filed challenging the quantum of compensation only, this Court is not dealing with the other aspects of the award passed by the Tribunal.

3.According to the appellant/claimant, on 27.06.2005 at 16.00 hours, when he was riding his Motorcycle bearing Registration No.TN-04-M-6283 at M.S.Koil Street and pumping station road junction Chennai - 13 from South to North direction, the first respondent's Motorcycle bearing Registration No.TN-10-K-6059 came in the same direction in a rash and negligent manner and hit the claimant's motorcycle, thereby the claimant thrown out and sustained grievous injuries. The rider of the first respondent's Motorcycle was responsible

for the cause of accident. The first respondent being the owner and the second respondent, who is the insurer of the offending motorcycle, they are jointly and severally liable to pay compensation. Stating that the accident occurred due to rash and negligent riding of the first respondent's motorcycle, the claimant filed a claim petition, claiming Rs.6,00,000/- as compensation.

4.The second respondent/Insurance company resisted the claim petition by filing a counter affidavit, denying the age, avocation and income of the claimant besides contended that the claimant had contributed to the accident and he craves leave from the liability. Hence, the second respondent prayed for dismissal of the claim petition.

5.So far as the quantum of compensation is concerned, it is the case of the appellant/claimant that at the time of accident, he was aged 56 years and was earning Rs.10,000/- per month by working as a Selection Grade Assistant in the Directorate of Government Examination, Chennai. In order to prove the claim, on the side of the claimant, four witnesses were examined viz., PW.1 to PW.4 and twenty one documents were marked as Ex.P1 to P21. None were examined on behalf of the second respondent insurance company nor were any exhibits marked.

6.Keeping the submissions made on either side, I have carefully perused the materials available on record.

7.After going through the oral and documentary evidence adduced before the Tribunal, it has come to the conclusion and awarded total compensation of Rs.1,50,200/-. Not being satisfied with the award of the Tribunal, the claimant has come up with the present appeal for enhancement of compensation before this Court.

8.It appears that through PW.2/doctor assessed the disability at 30%, the Tribunal has taken 25% disability and awarded a sum of Rs.50,000/- at the rate of Rs.2,000/- per percentage of disability. This Court is of the considered view that 25% of disability taken by the Tribunal is to be maintained. However, Rs.2,000/- per percentage of disability awarded by the Tribunal is on the lower side. Therefore, this Court feels that it would be appropriate to award Rs.3,000/- per percentage of disability. Accordingly, towards partial permanent disability, a sum of Rs.90,000/- is hereby awarded. Having regard to the nature of injuries sustained by the claimant and the period of his hospitalisation, this Court is inclined to award a sum of Rs.20,000/- under the head of pain and suffering as against of Rs.10,000/- awarded by the Tribunal. The Tribunal did not award any amount towards loss of amenities and future medical expenses. Though the claimant had lost his spine movement and it is difficult to walk fast, climb stairs,

sit on the floor and use Indian toilet for the said injury. In such circumstances, this Court is inclined to award Rs.10,000/- each towards loss of amenities and future medical expenses, which will meet the ends of justice. The amounts awarded under other heads by the Tribunal are not disturbed here. Thus, the award passed by the Tribunal is modified as indicated below:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of income for 2 months	Rs.20,000/-	Rs.20,000/-
Transportation	Rs.5,000/-	Rs.5,000/-
Extra-nourishment	Rs.5,000/-	Rs.5,000/-
Medical expenses	Rs.60,200/-	Rs.60,200/-
Pain and Suffering	Rs.10,000/-	Rs.20,000/-
Disability	Rs.50,000/-	Rs.90,000/-
Loss of amenities	-	Rs.10,000/-
Future medical expenses	-	Rs.10,000/-
Total	Rs.1,50,200/-	Rs.2,20,200/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,50,200/- is enhanced to a sum of Rs.2,20,200/- along with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, excluding the default period viz., from 08.10.2009 to 17.08.2010.

(ii) The second respondent/Insurance Company is directed to deposit the award amount as determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment.

(iii) On such deposit being made, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn.

(iv) The appellant/claimant is directed to pay necessary Court fee, if any, for the enhanced amount. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

klt

To

1.The Motor Accidents Claims Tribunal,
(III Court of Small Causes) Chennai.

2.The Section Officer,
V.R. Section,
High Court, Madras - 104.

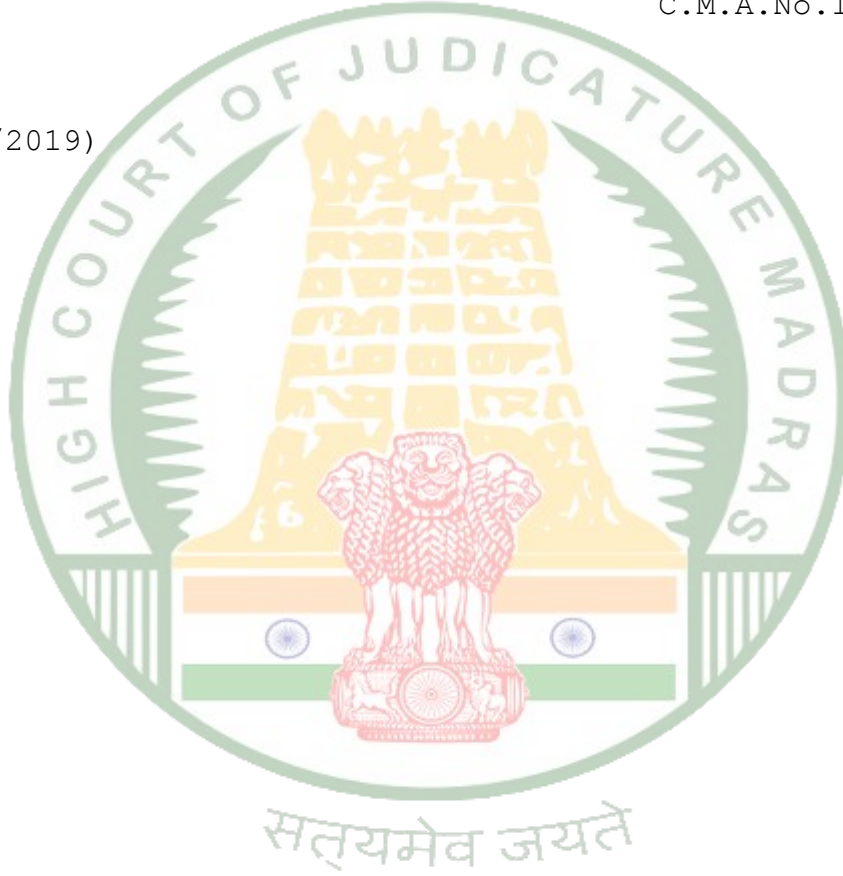
+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.29917

+1cc to N.Vijayaraghavan, Advocate, S.R.No.29358

C.M.A.No.1173 of 2012

GP (CO)

RRS (18/07/2019)



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