

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.04.2019

PRONOUNCED ON : 30.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No. 1190 of 2012

V.Shankar Nag ... Appellant/petitioner

.. Vs ..

1.V.S.Mani

2.United India Insurance Company Limited,
No. 826 Anna Salai, 7th Floor,
Tarapore Towers,
Chennai - 600 002. ...Respondents/Respondents
(R1 exparte in Lower Court)

PRAYER: Appeal is filed under Section 173 of the Motor Vehicle Act, 1988 against the judgment and decree dated 17.08.2011 made in M.C.O.P.No.1198 of 2007 on the file of the Motor Accidents Claims Tribunal, learned V Judge, Court of Small Causes, Chennai.

For Appellant : Mr.S.Gangaram Prasad

For R1 : Ex-parte

For R2 : Mr.G.Udaya Sankar

JUDGMENT

The injured/claimant is the appellant herein. Challenging the award passed in MCOP.No.1198 of 2007, dated 17.08.2011, on the file of the learned V Judge, Court of Small Causes, Chennai, the appellant has come up with the present appeal.

2 The appellant herein/claimant filed the claim petition alleging that on 01.11.2006, at about 09.30 hours, while he was travelling in his college mini bus, bearing registration No.TN-21-M-4223, from Chennai towards Chengalpet on GST Road, Meenambakkam, Chennai, near the airport DGQU Complex, Mennambakkam, the police constable on duty stopped the vehicles going from Chennai towards Chengalpet and the driver of the college mini bus also stopped the vehicle. The tipper lorry bearing Registration No.TB-09-AL-2973, owned by

the first respondent herein and insured with the second respondent herein/Insurance Company vide policy No.011600/31/05/01242 valid from 11.11.2005 to 10.11.2006, being driven by its driver in a rash and negligent manner, dashed against the parked mini bus. Due to which, the appellant herein/claimant sustained injuries, for which the respondents are jointly and severally liable to pay the compensation.

3 Before the Tribunal, the appellant herein/claimant examined himself as PW1 and Dr.N.Saichandran, was examined as PW2 and documents Exs.P1 to P11 were marked. On behalf of the respondents no oral or documentary evidence adduced.

4 On consideration of both oral and documentary evidence, the Tribunal has held that the accident had taken place due to the rash and negligent driving of the driver of the first respondent's herein offending vehicle, which was insured with the second respondent herein/Insurance Company.

5 In the absence of any challenge to the said finding, the factum of the accident, manner of the accident, rash and negligence on the part of the driver of the first respondent's herein offending vehicle and the same is hereby confirmed.

6 On the point of quantum, both the learned counsel for the parties were heard.

7 At the time of accident, the injured was studying III year B.E. Course in the Engineering College and was aged about 19 years. PW2/Doctor has deposed that he examined the appellant herein/ claimant clinically and on the basis of wound certificate, he assessed the disability at 55%. The fractured bones of the appellant herein/claimant are malunited due to which, movements are restricted to an extent of 30 degrees; the appellant herein has got limp and has difficulty in doing work by standing and has got a disability of 55%.

8 Taking into consideration, the nature of the injuries sustained by PW1/injured as spoken to PW2/Doctor and that after the fracture on both the legs, right leg was lowered by 1/3rd and due to the fracture of both bones on the left leg, the same was lowered by 1/3rd and hence, the 55% disability fixed by the Doctor is hereby taken as 50% disability and the compensation awarded by the Tribunal is re-assessed as under:

i) Loss of earning during the treatment for three months is fixed as $7,500 \times 3 = 22,500/-$

ii) As the claimant seems to have underwent to conservative orthopedic line of treatment, AK slab was performed and no surgery has taken place. Accordingly, at the rate of Rs.1,500/- per percentage of disability for 55%, the compensation is $55 \times 1,500 = 82,500$.

Description	Amount awarded by Tribunal (in Rs.)	Amount awarded by this Court
Loss of Income (for three months)	22,500.00	7,500x3 =22,500.00
Disability	60,000.00	55x1500 =82,500.00
Transportation charges	8,000.00	8,000.00
Nutrition and extra nourishment	10,000.00	10,000.00
Attendant charges	-	3,000.00
Loss of amenities	15,000.00	60,000.00
Loss of matrimonial prospects	25,000.00	50,000.00
Pain and suffering	25,000.00	25,000.00
Medical expenses (as per Ex.P4)	15,000.00	20,000.00
Total	1,80,500.00	2,81,000.00

Hence the compensation is re-assessed and enhanced from Rs.1,80,500/- to Rs.2,81,000/-

9 In the result,

I. This Civil Miscellaneous Appeal is partly allowed accordingly by enhancing the compensation from Rs.1,80,500/- to Rs.2,81,000/- with proportionate costs.

II. The interest granted by the Tribunal at 7.5% stands confirmed.

III. The respondents before the Tribunal are directed to deposit the enhanced compensation amount within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

IV. On such deposit being made, the claimant is permitted to withdraw the entire award amount with proportionate interest, as apportioned by the Tribunal, less the amount already withdrawn, if any.

V. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation.

Sd/-

Assistant Registrar(Arbitration)

//True Copy//

Sub Assistant Registrar

To

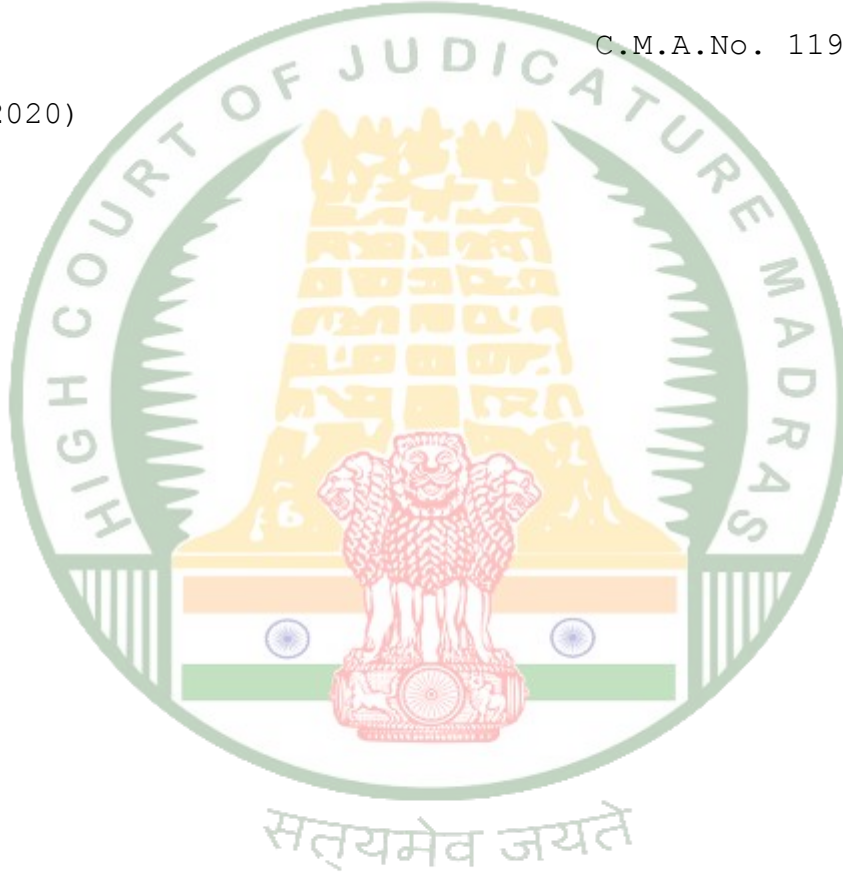
1.The Motor Accidents Claims Tribunal,
learned V Judge, Court of Small Causes, Chennai.

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

+lcc to Mr.G.Balaji Prasad, Advocate, S.R.No. 65242

RV(CO)
GN(25/02/2020)

C.M.A.No. 1190 of 2012



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