

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :04.04.2019
Judgment Delivered on :23.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1781 of 2012

S.Punitha

... Appellant

..Versus..

1.Vinnimalai

(1st respondent set-exparte before the Tribunal)

2.National Insurance Co.Ltd.,

No.66, Greams Road,

Chennai-600 006.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 06.01.2012 made in M.C.O.P.No.61 of 2007 on the file of the Motor Accident Claims Tribunal (V Court of Small Causes), Chennai.

For Appellant : Mr.K.Varadha Kamaraj
for Mr.M.Saravanan
For R1 : Exparte before the Tribunal
For R2 : Mr.J.Chandran

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order and Decree dated 06.01.2012 made in M.C.O.P.No.61 of 2007 on the file of the Motor Accident Claims Tribunal (V Court of Small Causes), Chennai. सत्यमेव जयते

2. The essence of the case is that on 12.02.2006 at about 4.00 p.m., while the claimant was riding two wheeler bearing Registration No.PY 01 R 5123 along with the pillion rider in Chennai to Trichy National Highways, Perangiyur Paithampadi junction Road, the lorry bearing Registration No.TN 59 Z 2184 owned by the 1st respondent proceeding towards Villupuram came from behind and dashed against the claimant's vehicle, due to which, the claimant sustained injuries. The accident had taken place due to rash and negligent driving on the part of driver of the first respondent's vehicle, which was insured with the second respondent-Insurance company. Therefore, the claim petition was filed seeking compensation of Rs.4,00,000/-.

3. The second respondent-Insurance company resisted the claim petition by disputing the age, income and other details furnished by the claimant in the claim petition and prayed for dismissal of the claim petition.

4. The Tribunal awarded a sum of Rs.1,98,500/- as compensation to the claimant. However, the claimant, having not been satisfied with the award of compensation made by the Tribunal, seeks enhancement of compensation by filing this appeal.

5. Before the Tribunal, the claimant examined himself as P.W.1, besides, Dr.N.Saichandran was examined as PW.2 and Dr.M.Saravanabavanandam was examined as P.W.3 and the claimant has produced Eleven documents as Exs.P1 to P11. On the side of the respondent, no oral or documentary evidence was adduced.

6. Heard the counsel for both sides and perused the materials placed on record.

7. The factum of the accident, the manner of the accident, rash and negligence on the part of the driver of the offending vehicle belonging to the first respondent insured with the second respondent-Insurance Company not being challenged, are hereby confirmed.

8. P.W.1 examined himself and deposed regarding the accidental injuries and also examined Ex.P8-Disability Certificate issued by P.W.2-Doctor and Ex.P10-Disability Certificate issued by P.W.3-Doctor.

9. P.W.3-Doctor would depose that he has given a disability certificate to the claimant and the claimant had sustained 60% partial permanent disablement due to the haemorrhagic contusion left temporoparietal region and right temporal region, right LMN facial palsy (fracture of right temporal bone) and fracture of clavicle right. From these two disability certificates Ex.P8 and P10, it is clear that Ex.P10 is given for all the injuries sustained by the claimant, but Ex.P8 has been given only fracture of right clavicle and therefore, the disability of the claimant is to be assessed on the basis of Ex.P10 and on going through Ex.P3, this Court finds that the appellant/claimant had sustained haemorrhagic contusion left temporoparietal region and right temporal region, right LMN facial palsy (fracture of right temporal bone and fracture of clavicle right. Considering the nature of injuries and fracture and the fact that the Doctor himself has admitted that the opinion of disability may be varied 5% from Doctors to Doctors and therefore, the disability is assessed at 55%.

10. Taking into the entirety of the circumstances, this Court is of the considered view that the disability suffered by the claim petitioner is re-fixed at 60% and the date of the accident being in the year 2006, Rs.1500/- was awarded for 1% of the disability. Accordingly, the compensation is re-assessed at 60% at the rate of Rs.1,500/- Accordingly, for 60% of disability a sum of Rs.90,000/- is awarded. (60%x1500/-=Rs.90,000/-).

11. Further, under the heads of 'pain and suffering' and 'Extra nourishment', the Tribunal awarded Rs.30,000/- and Rs.10,000/- are hereby confirmed. With regard to 'medical expenses' the Tribunal awarded Rs.29,966/- and this Court awards a sum of Rs.59,649/- as per Ex.P4 under the same. With regard to 'transportation', it is hereby enhanced from Rs.6,000/- to Rs.10,000/-. In respect of the 'loss of earning' during the period of treatment for five months, a sum of Rs.50,000/- (1000 x 5) is hereby awarded. With regard to 'attender charges' and 'loss of amenities', this Court awards a sum of Rs.3,000/- and Rs.4,000/- respectively.

12. Accordingly, the award of the Tribunal in M.C.O.P.No.61 of 2007 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Permanent disability	Rs. 82,500/-	Rs. 90,000/-
2.	Pain and sufferings	Rs. 30,000/-	Rs. 30,000/-
3.	Medical expenses	Rs. 29,966/-	Rs. 59,649/-
4.	Extra Nourishment	Rs. 10,000/-	Rs. 10,000/-
5.	Transport to Hospital	Rs. 6,000/-	Rs. 10,000/-
6.	Loss of earning	Rs. 40,000/-	Rs. 50,000/-
7.	Attender's charges	----	Rs. 3,000/-
8.	Loss of amenities	----	Rs. 4,000/-

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
	Total	Rs.1,98,466/- Rounded off Rs.1,98,500/-	Rs.2,56,649/- Rounded off Rs.2,56,700/-

The compensation awarded by the Tribunal is enhanced from Rs.1,98,500/- to Rs.2,56,700/- which shall carry interest at the rate of 7.5% per annum.

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,98,500/- to Rs.2,56,700/-.

(iii) The appellant/claimant is directed to pay the court fee, if any, for the enhanced compensation amount, and the Registry is directed to draft the decree only after the receipt of court fee.

(iv) The second respondent/National Insurance Company Limited is directed to deposit the enhanced compensation amount awarded by this court, i.e., Rs.2,56,700/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 61 of 2007 on the file of the Motor Accidents Claims Tribunal, (V Court of Small Causes) Chennai, within a period of eight weeks from the date of receipt of a copy of this judgment.

(v) On such deposit being made by the second respondent-Insurance Company, the appellant/claimant is permitted to withdraw the same, in the manner known to law.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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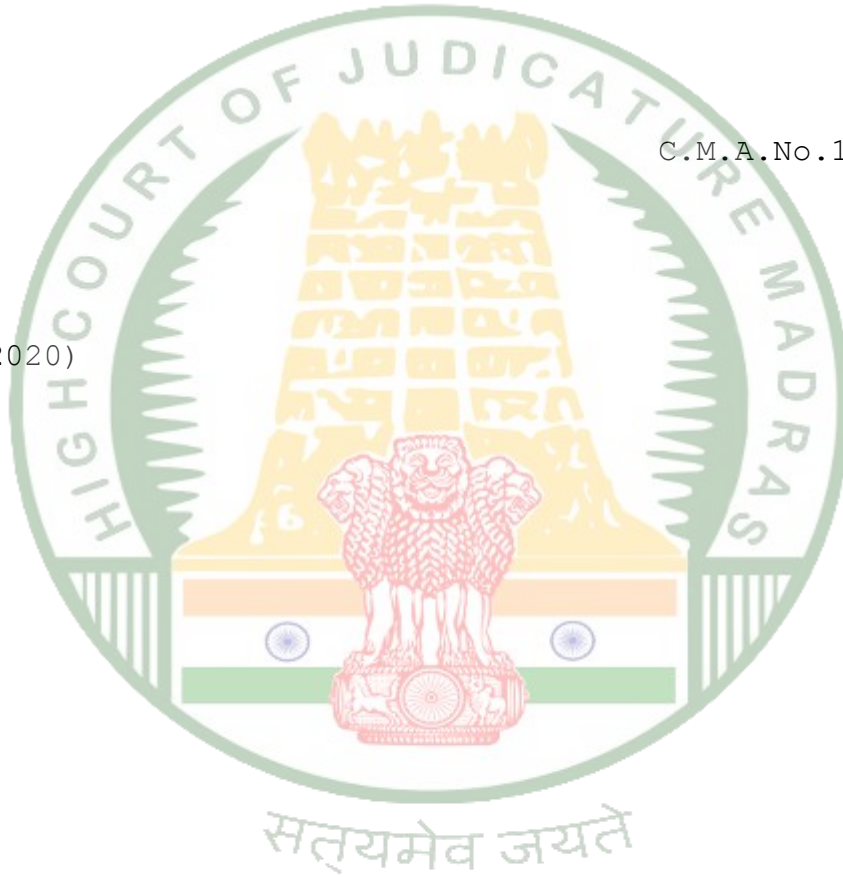
1.The Motor Accidents Claims Tribunal,
(V Court of Small Causes), Chennai.

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

+1 CC to Mr.M.Saravanan, Advocate sr 62906.

C.M.A.No.1781 of 2012

RR (CO)
SP(08/06/2020)



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