

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.2401 of 2011

S.Gurunathan

... Appellant/Petitioner

Versus

1.Perichippan.AL

2.National Insurance Co., Ltd.,

No.29, Pulla Avenue Shenoy Nagar,
Chennai - 600 030.

... Respondents/Respondents

(R1- set as ex-parte in Trial Court)

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 26.11.2010 made in M.A.C.T.O.P.No.4543 of 2007 on the file of the IV Judge, Small Causes Court (Motor Vehicles Accident Claims Tribunal) at Chennai.

For Appellant

: Mr.K.V.Muthu Visakan

For R1

: Ex-party in trial Court

For R2

: Mrs.N.B.Surekha

JUDGMENT

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This Civil Miscellaneous Appeal is directed against the award dated 26.11.2010 made in M.A.C.T.O.P.No.4543 of 2007 on the file of the IV Judge, Small Causes Court, (Motor Vehicles Accident Claims Tribunal) at Chennai.

2.The claimant has filed claim petition contending that on 21.10.2007 at about 19.15 hours, he was riding his cycle on Medavakkam Tank Road to Varadhammal Thottam Junction, Chennai. At that time, a motorcycle bearing No.TN-02-AB-2808 was driven by the first respondent, owner cum driver of the vehicle, in a rash and negligent manner from the opposite direction and dashed against the appellant/claimant, which resulted in the accident. The appellant/ claimant sustained pelvic injuries and multiple injuries. The rider of the Motorcycle is responsible for the said accident. The vehicle of the first respondent is insured with the second respondent and therefore, they are jointly and severally liable to pay compensation. The claimant made a claim of Rs.3,00,000/- which was restricted to Rs.2,00,000/- as compensation for the injuries sustained by him in the accident.

3.The Tribunal, after analysing the oral and documentary evidence placed before it, has rendered a finding that the accident had occurred only due to the rash and negligent driving of the rider of the motorcycle. Therefore, the Tribunal computed the compensation payable to the claimant under various heads and awarded a sum of Rs.1,09,500/- as compensation to the claimant. Not being satisfied with the quantum of compensation, the claimant/appellant has preferred this present appeal.

4. Learned counsel appearing for the appellant/claimant would contend that the appellant/claimant was working as Painter and he sustained pelvic injuries, which was proved by examining the Government Doctor, PW.2, who had issued the disability certificate under Ex.P6. Further, Ex.P3 is the copy of Accident Register, which shows that the appellant/claimant has suffered grievous injuries. Furthermore, learned counsel for the claimant/appellant has stated that since the claimant was working as a painter, the Tribunal calculated the loss of income as per his daily income of Rs.150/-, which is also meager.

5.The learned counsel appearing for the second respondent / Insurance company contended that the Painter could not have worked on all 30 days and hence, the award amount is appropriate and the amounts awarded by the tribunal under the various heads are found reasonable and does not warrant any modification. Therefore, she prayed for dismissal of the appeal.

6.Heard both sides.

7. After hearing both sides and considering the nature of injury, period of treatment, disability sustained by the appellant/claimant, this Court consider the claim of the claimant and it could be seen from the award passed by the Tribunal that on the ground of permanent disability the Tribunal, taking into account of the permanent disability awarded Rs.1,500/- per percentage of disability and awarded Rs.60,000/-. Having regard to the grievous injuries sustained by the claimant and his age 47, at the time of accident, this Court feels that a sum of Rs.2,000/- could be awarded per percentage of disability and accordingly, the amount awarded under permanent disability is enhanced to Rs.80,000/-. Further, this Court feels that apart from the amount awarded by the Tribunal, a sum of Rs.5,000/- shall be awarded towards attendant charges and Rs.20,000/- towards non-conventional amount shall be awarded. Thus, the total enhancement amount of Rs.45,000/- is awarded and accordingly the award of the Tribunal is modified as follows:-

Heads	Amount awarded by the Tribunal	Amount Modified and enhanced by this Court
Loss of Income	Rs.13,500/-	Rs.13,500/-
Transport to Hospital	Rs.3,000/-	Rs.3,000/-
Extra Nourishment	Rs.7,000/-	Rs.7,000/-
Damage to clothing	Rs.1,000/-	Rs.1,000/-
Attendant Charges	-	Rs.5,000/-
Non-conventional	-	Rs.20,000/-
Medical Expenses	Rs.5,000/-	Rs.5,000/-
Pain and Sufferings	Rs.20,000/-	Rs.20,000/-
Permanent Disability	Rs.60,000/-	Rs.80,000/-
Total	Rs.1,09,500/-	Rs.1,54,500/-

8. In the result, the Appeal is Partly allowed. The Judgement and decree dated 26.11.2010 made in M.A.C.T.O.P.No.4543 of 2007 on the file of the IV Judge, Small Causes Court, (Motor Vehicles Accident Claims Tribunal) at Chennai is modified by enhancing the total compensation amount to Rs.1,54,500/-. The second respondent/ Insurance Company is directed to pay the compensation on behalf of the first respondent together with interest as awarded by the Tribunal. The appellant is directed to pay additional Court fee for its enhanced amount. The second respondent is directed to deposit the amount as determined in

this appeal together with interest, after adjusting amount, if any, already deposited within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the entire amount, as determined in this appeal, with accrued interest. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

klt

To

1. The IV Judge, Small Causes Court,
(Motor Vehicles Accident Claims Tribunal)
Chennai.
2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr.K.V.Muthuvisakan, Advocate Sr.9217
+1cc to M/S.N.B.Surekha, Advocate Sr.9470

CMA No.2401 of 2011

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srg 18/06/2019

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