

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.06.2019
CORAM
THE HONOURABLE MRS. JUSTICE S. RAMATHILAGAM

C.M.A.No.1945 of 2015 and
M.P.No.1 of 2015

United India Insurance Company Ltd.,
No.19, Andiappa Gramani Street,
Royapuram, Chennai - 6.

...Appellant/2nd Respondent

Vs.

1.Perumal

...Petitioner

2.K.Magendiran

...1st Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the award and decree dated 28.01.2015 made in O.P.No.94 of 2012 on the file of the Motor Accidents Claims Tribunal (In the VI Court of Small Causes), Chennai.

For Appellant : Mr.D.Bhaskaran

For Respondents: No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the award and decree dated 28.01.2015 made in O.P.No.94 of 2012 on the file of the Motor Accidents Claims Tribunal (In the VI Court of Small Causes), Chennai.

2.The brief facts leading to the claim application are as follows:

On 16.08.2011 at about 19.00 hours the petitioner was riding the vehicle bearing Registration No. TN-03-C-0995 at Ennore Express Road, Ellaiamman Koil Street Junction, Thiruvannamiyur, Chennai 19. At that time, an auto rickshaw bearing Registration No.TN-04-AF-3052 belonging to the 1st respondent insured by the 2nd respondent, driven by its driver, came behind the petitioner in a rash and negligent manner endangering to the public safety and dashed against the petitioner's vehicle, thereby the petitioner sustained grievous injuries for which, the respondents are liable to pay the compensation of Rs.1,00,000/-.

3.The respondent/Insurance Company denied the mode of accident and the liability also. Apart from that the age,

occupation and income of the claimant was also very much denied by the respondent, in the absence of any proof. The other contention raised by the respondent/Insurance Company is that the driver of the said vehicle bearing Registration No.TN-04-AF-3052 has no driving licence at the time of accident.

4.The Tribunal, after analysing the evidence and documents placed before the same, has given the findings with the accident occurred only due to the rash and negligent driving on the part of the driver of the Auto rickshaw. Since the evidence of D.W.1 remained unchallenged and it was not denied while assessing the compensation, the Tribunal, after perusing the evidence given by the injured person, and also the documents relating to the nature of injury and the treatment taken, awarded a sum of Rs.90,000/- under the various heads.

S.No.	Head	Amount
1	Treatment and other expenses	Rs.50,000/-
2	Disfigurement in the right hand	Rs.40,000/-
Total		Rs.90,000/-

Aggrieved against the said award, this appeal has been preferred by the Insurance Company who is the second respondent herein.

5.Heard Mr.D.Bhaskaran learned counsel appearing for the appellant. No appearance on behalf of the respondents.

6.In the grounds of appeal, the appellant/Insurance Company contended that the sum awarded by the Tribunal is very huge because, the injuries sustained by the claimant is only simple injury. That apart, there is no disability in this case since the injuries sustained by the claimant are only simple in nature and in fact, without any disability and in the absence of any examination to that effect, the Tribunal has awarded a sum of Rs.50,000/- itself is highly excessive. Further, the sum awarded under the head in the right hand at Rs.40,000/- is not at all reasonable one. Hence, the award is highly excessive.

7. From a perusal of records, it is seen that P.W.1 and P.W.2 have spoken about the nature of injury and the disability sustained by the victim due to the accident. It is also observed from the examination of the Doctor that the injuries are simple in nature. The Tribunal has made an elaborate discussion about the nature of the shock sustained by the victim at the time of accident and by observing that the same cannot be measured by money value, sum has awarded a lumpsum at Rs.50,000/- under the head treatment and other expenses. This Court also does not interfere with the said amount. Considering the claimant's age, nature of injuries and treatment. Hence, the said sum of Rs.50,000/- was awarded for Loss of Income, Medical Expenses, Transport to Hospital Charges, Extra Nourishment, Damage to clothes, Loss of Earning and Pain and Sufferings. But considering the injuries sustained by the claimant which are simple in nature and the evidence of Doctor also prove the same, the sum awarded by the Tribunal under the head 'disfigurement in the right hand' is excessive and the same has to be modified. The lumpsum has been awarded the other including the nature of injuries.

8. Since the above sum of Rs.50,000/- under the head Transportation and other expenses includes the nature of injuries, this Court is of the view that it would be proper to award a sum of Rs.15,000/- instead of Rs.40,000/-. Accordingly, the compensation awarded at Rs.90,000/- by the Tribunal is reduced to Rs.65,000/-.

9. In the result,

(i) this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) It is represented by the learned counsel appearing for the appellant / Insurance Company that they have deposited the entire amount awarded by the Tribunal. Therefore, the appellant / Insurance Company is permitted to withdraw the remaining, after deducting the modified amount awarded by this Court. The interest for the modified amount shall be of 7.5% per annum.

Sd/-
Asst. Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

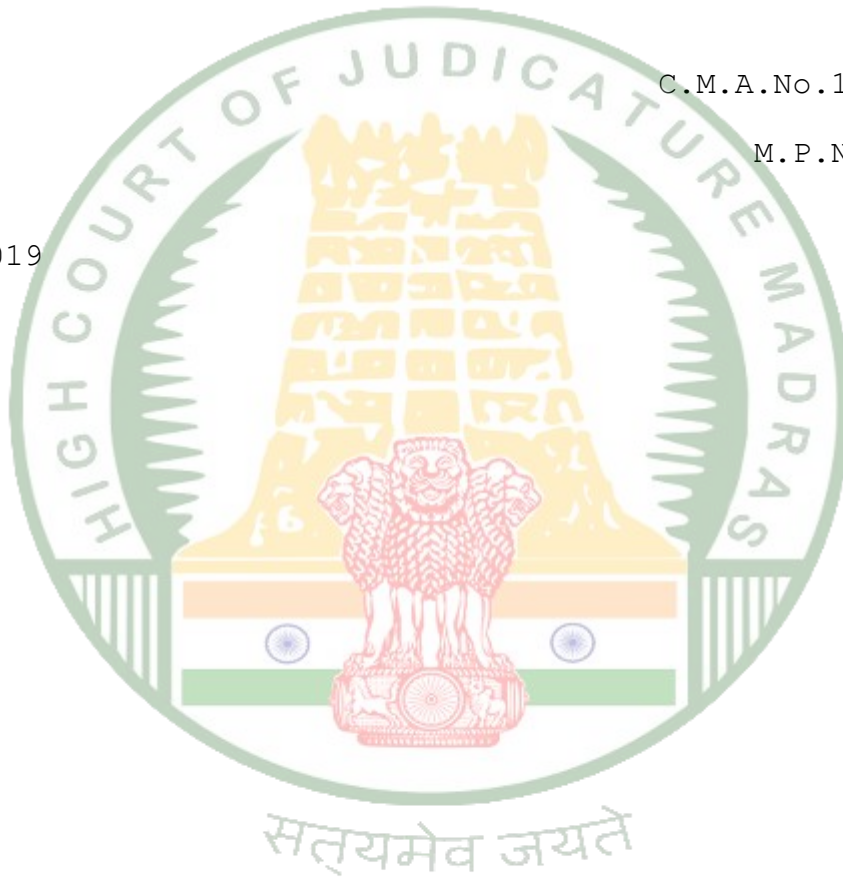
The Motor Accidents Claims Tribunal
(In the VI Court of Small Causes),
Chennai.

2.The VR Section
High Court of Madras

+1 cc to Mr.D.Bhaskaran Advocate sr47925
+1 cc to Mr.V.Velu Advocate sr48927

C.M.A.No.1945 of 2015
and
M.P.No.1 of 2015

aa25/11/2019



WEB COPY