

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

C.M.A.No.2024 of 2015

V.Navaneetham

...Appellant/Claimant

Vs.

1.M.Sheik Mohameed

2.ICICI Lombard General Insurance Company,
Chotabhai Towers,
No.140, Nungambakkam High Road,
Chennai 600 006.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the Judgment and Decree dated 20.02.2015 made in MACT.O.P.No.4882 of 2012 on the file of the V Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.

For Appellant : Mr.P.T.Salim Fathima

For Respondent 2 : Mrs.R.Sreevidhya

For Respondent 1 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the Judgment and Decree dated 20.02.2015 made in MACT.O.P.No.4882 of 2012 on the file of the V Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.

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

On 12.07.2012 at about 14.30 hours, the petitioner sustained injuries, while he was travelling along with his family members in a Car bearing Registration No.TN-20-CY-0887 from Padappai to Kolathur and at the time the tipper Lorry bearing Registration No.TN-22-H-0509 came from the opposite direction in the rash and negligent manner and dashed against the car and thereby the occupants including the appellant/claimant sustained multiple fracture injuries and the appellant/claimant has claimed a sum of Rs.6,00,000/- as compensation for the injuries Loss of Income, Transport of Hospital, Damages of Articles, Pain and

Sufferings.

3.The second respondent/ICICI General Insurance Company denied the facts regarding the alleged accident stated by the appellant/claimant and also denied the fact that the driver had valid the driving licence at the time of accident. Apart from that the nature of injuries sustained by the claimant and the claim made under various heads were also very much denied by stating as highly excessive, in the absence of any proof.

4.The Tribunal, after analysing the evidence and documents has given the findings that the accident occurred due to the rash and negligent driving on the part of the driver of the tipper lorry and by verifying the Charge Sheet, FIR and the evidence of the witness, the Tribunal, has awarded a sum of Rs.36,500/- under the following heads.

S.No.	Head	Amount
1	Extra Nourishment, Pain and Sufferings, Loss of Amenities	Rs.30,000/-
2	Medical Bills	Rs.6,500/- (5024.80 + 1150 = 6174.80)
Total		Rs.36,500/-

Aggrieved against the said Judgment, this appeal has been preferred by the claimant for enhancement.

5. In the grounds of Appeal it is stated that the appellant/claimant was working as Cook in the functions and was earning Rs.7500/- to Rs.9000/- per month, but the Tribunal has not considered the Loss of Income during the treatment period and awarded a sum of Rs.35,000/- the same awarded under the Heads. Transport of Hospital, Extra Nourishment and Damages to the car is very much high. When the Medical Expenses awarded the tribunal has not considered. Hence, the appellant is very much aggrieved by the consolidated sum of Rs.30,000/- which is not at all justified. It is further contended that when the Doctor assessed the disability at 25%, the Tribunal has ignored the same and there is no sum awarded for Permanent disability. Hence, the claimant is very much aggrieved against the compensation and preferred this enhancement of compensation.

6. Heard Mr.P.T.Salim Fathima learned counsel appearing for the appellant. Mrs.R.Sreevidhya learned counsel appearing for the second respondent and the first respondent remained ex-parte.

7. It is seen from the records to that Ex.P14 is the document issued by the Hindu Mission Hospital which clearly proves that the claimant sustained injuries all over the body for which suturing is done. Further, she was advised to take ortho opinion, CT brain (Plain) study general surgeon opinion, X ray chest, but, these documents were not filed before the Tribunal. Ex.P16 is the document which reveals the fact that the claimant/appellant has undergone Physiotherapy wax bath for her knee. The X Ray report Ex.P17 is related to the month of September 2013. On observing the discussions of the Tribunal, it is relevant to note that the accident occurred on 12.07.2012. Further it is also observed that there is no continuous treatment records linking the said ailments with the injury sustained by the appellant in the accident, hence, the Tribunal has not considered the disability assessed by the Doctor and has not awarded any amount made for disability.

8. On the other hand, the 2nd respondent / Insurance Company has argued that P.W.6 has clearly deposed that he has not seen the Ortho opinion and X Ray taken in the Hindu Mission Hospital. Further his admission is that he has not seen the exhibits before the Court and as assessed disability based upon the xerox copy of the Medical documents of Hindu Mission Hospital.

9. Hence, it is clear that the claimant/appellant has not furnished any relevant documents regarding the nature of injuries, she actually sustained and also the history of treatment given for the said injuries and the disability in spite of the treatment undergone by the claimant. Hence, the observation of the Tribunal to the effect that the evidence of P.W.6 cannot be considered since P.W.6 is not the person who treated the injured person and no X Ray report was filed to prove the injuries is proper. Since there is no relevant documents produced before the Tribunal and the said injuries were considered as simple nature and accordingly, Tribunal has awarded a sum of Rs.30,000/- of Extra Nourishment, Pain and Sufferings and Loss of Amenities at Rs.30,000/- is proper and reasonable. It is also seen that the Medical Bills were properly considered and the sum awarded for Medical Bills also does not require any modification. Hence, in the absence of any specific and relevant documents regarding the nature of injuries, the award assessed by the Tribunal is quite reasonable and proper and does not require any interference by this Court.

10.In the result, this Civil Miscellaneous Appeal is dismissed. The award passed by the Tribunal in M.C.O.P.No.4882 of 2012 by the learned Motor Accidents Claims Tribunal, V Judge Court of Small Causes, Chennai is confirmed. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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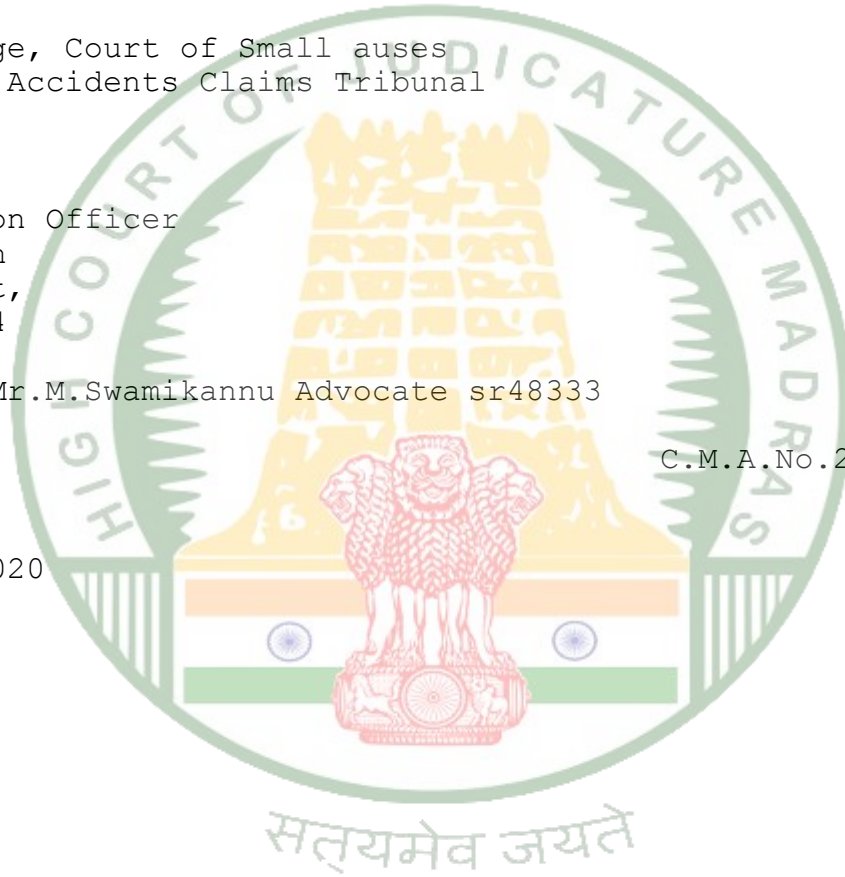
The V Judge, Court of Small causes
The Motor Accidents Claims Tribunal
Chennai.

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The Section Officer
VR Section
High Court,
Madras-104

+1 cc to Mr.M.Swamikannu Advocate sr48333

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