

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2728 of 2011

Theertham

.. Appellant/Petitioner

Vs.

1.R.Sekar

(was set exparte in the Trial Court)

2.The Manager,

New India Assurance Company Limited,

No.47, Moore Street,

Chennai - 600 002

.. Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 20.05.2010 made in MC.O.P.No.824 of 2004 on the file of the Additional District Judge, Fast Track Court No.III, Thiruvallur.

For Appellant : Mr.N.M.Elumalai

For R1 : Exparte before the Tribunal

For R2 : Mr.P.G.Padmanabhan

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order and Decree dated 20.05.2010 made in MC.O.P.No.824 of 2004 on the file of the Additional District Judge, Fast Track Court No.III, Thiruvallur.

2. The averments made in the claim petition in brief are as follows:-

ON 02.09.2004 at about 22.30 hrs., while the claimant was travelling as a passenger in a autorickshaw bearing Registration No.TN 01 H 9523, proceeding from West to East in paper mills road opposite to Ajantha Bakery. At that time, the driver of autorickshaw had lost his control and drove the vehicle in a rash and negligent manner and endangering to the public safety hitting against the drainage stones. Hence, the autorickshaw rolled upside down thereby the claimant sustained greivous and multiple injuries. The accident is due to rash and

negligent driving of the 1st respondent vehicle and its driver only. The first respondent as the owner and the 2nd respondent as the Insurance Company are jointly and severally liable to pay compensation. Having not been satisfied with the award of compensation by the Tribunal, the claimant has preferred this appeal.

3. The Tribunal, after taking into consideration the oral and documentary evidence, awarded a compensation of Rs.52,100/- with interest at 7.5% per annum.

4. Heard both sides and perused the materials on record.

5. During the Trial, the claimant/appellant was examined himself as P.W.1 and Doctor was examined as P.W.2 and Exhibits P1 to P7 were marked. On behalf of the respondent side, no oral and documentary evidence were adduced before the Tribunal.

6. It is seen from the Exhibit P2-Discharge summary that the injured was in-patient in Government Kilpauk Medical College Hospital from 03.09.2004 to 01.11.2004 and 23.11.2004 to 03.12.2004. He had sustained fracture on the right upper arm. The percentage of disability awarded by P.W.2 Doctor seems to be on the higher side and in the facts and circumstances of the case, the claimant has sustained 30% disability, the Tribunal considering the date of the accident, has awarded Rs.30,000/- for 'partial permanent disability' and the same is hereby confirmed.

7. A perusal of the medical bills shows that some of the bills do not contain the seal of the hospital and omitting those bills, the Tribunal has awarded a sum of Rs.10,000/- under the head of 'medical expenses' and the same is hereby confirmed.

8. It is seen from the records that Exhibit P2-discharge summary shows that the claimant was admitted as an in-patient in Government Kilpauk Medical College Hospital from 03.09.2004 to 01.11.2004 and 23.11.2004 to 03.12.2004. Therefore, the Tribunal has awarded a sum of Rs.7,100/- under the head of 'loss of income' and the same is hereby confirmed.

9. For attendance charges, it is seen that there is no award passed by the Tribunal. However, after going through Exhibit P2 and Exhibit P7 series Discharge summary, in the interest of justice, Rs.15,000/- is hereby awarded for "attendance charges".

10. Furthermore, the Tribunal has awarded a sum of Rs.5,000/- towards pain and sufferings, for transportation and for extra nourishment. Taking into consideration, the nature of injuries and he was taking treatment as in-patient for more than 71 days, this Court is enhanced for a sum of Rs.10,000/- each

under the heads of 'pain and sufferings', 'Transport charges', 'nutrition charges and 'Extra nourishment'. The appellant/claimant is entitled to a sum of Rs.15,000/- towards 'loss of amenities'. Hence, total compensation is hereby enhanced to Rs.70,000/- from Rs.52,100/- as awarded by the Motor Accidents Tribunal. The amount awarded is hereby tabulated:

Heads	Trial Court	High Court
Loss of Income	Rs. 7,100/-	Rs. 7,100/-
Medical Expenses	Rs. 10,000/-	Rs. 10,000/-
Partial permanent disability	Rs. 30,000/-	Rs. 30,000/-
Pain and sufferings, transportation, extra nourishment	Rs. 5,000/-	Rs. 30,000/- (Rs.10,000/- each)
Nutritioin charges	---	Rs. 10,000/-
Attender charges	---	Rs. 15,000/-
Loss of amenities	---	Rs. 15,000/-
Total	Rs. 52,100/-	Rs. 1,22,100/-

11. The learned counsel for the Insurance Company stated that the entire award amount has already been deposited the amount awarded by the Tribunal and the Insurance Company shall deposit the balance amount within a period of eight weeks from the date of receipt of a copy of this judgment. Interest at the rate of 7.5% with regard to the enhancement of amounts shall accordingly be calculated for payment.

12. With the above enhancement in the amount awarded by the Tribunal, this Civil Miscellaneous Appeal is partly allowed. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. No costs.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

To

The Additional District Judge,
Fast Track Court No.III, Thiruvallur.

Copy to

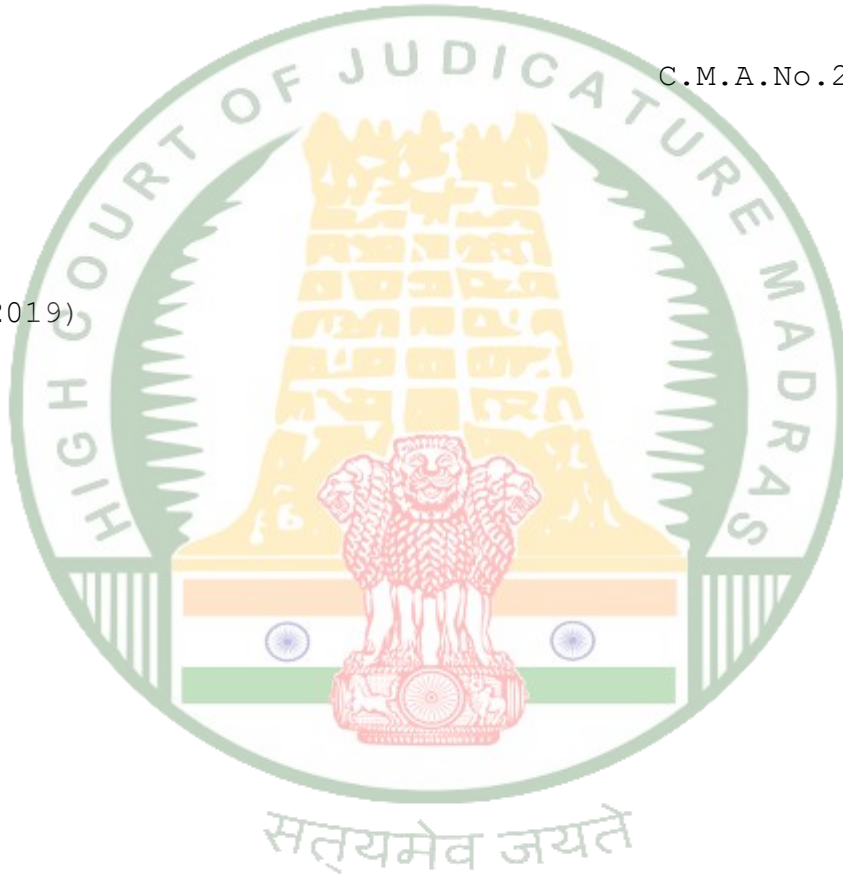
The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.N.M.Elumalai, Advocate sr 20612.

+1 CC to Mr.P.G.Padmanabhan, Advocate sr 20210

C.M.A.No.2728 of 2011

SAI (CO)
SP(10/05/2019)



WEB COPY