

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3486 of 2011

V.Manian

.. Appellant

Vs.

1.Ramamoorthy
2.E.Mariappan
3.R.Rajendran
4.United India Insurance Company Limited,
280, Ooty Main Road,
Mettupalayam, Coimbatore District.

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 27.06.2011 made in M.C.O.P.No.420 of 2009 on the file of the Motor Accidents Claims Tribunal (I Additional Sub-Judge), Erode.

For Appellant : Mr.R.Nalliyappan

For R4 : Mr.T.Ravichandran

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order and Decree dated 27.06.2011 made in M.C.O.P.No.420 of 2009 on the file of the Motor Accidents Claims Tribunal (I Additional Sub-Judge), Erode.

2. The facts of the case as per claim petition is that on 22.08.2009 at about 8.00 P.M, the claimant was riding in his TVS XL Super moped bearing Registration No.TN 40 C 4081 after over his work returned to his home from Mettupalayam towards Kallar on the Ooty Main Road from East to West direction, in a very slow speed, cautious manner, adhering the road traffic rules and regulations and also very extreme left side of the road. When he neared at A.K.S.Colony, a 407 lorry bearing Registration No.TN 31 A 6616 came from opposite

direction, driven by the 1st respondent in a rash and negligent manner, without following the road traffic rules and regulations and also came to wrong side of the road, resulted, dashed against the claimant's moped. Due to forceful impact, the claimant fell down on the road with sustained bone fracture, multiple grievous injuries and simple injuries. Hence, the accident was occurred only due to rash and negligent driving of the 1st respondent and he is solely responsible for the same.

3. The Tribunal, after taking into consideration the oral and documentary evidence, awarded a compensation of Rs.1,35,000/- with interest at 7.5% per annum. Hence, the appeal.

4. After hearing both the parties, the rash and negligent driving of the driver of the first respondent offending vehicle is not in dispute and the same is hereby confirmed.

5. The learned counsel for the claimant has submitted that after the surgery, the claimant could not able to perform his duties and he has unable to earn income and the disability fixed by the Tribunal is too low and hence, seeks enhancement of the award of compensation.

6. The learned counsel for the Insurance Company has made submissions in support of the award.

7. In order to substantiate the claim for the injury, P.W.2 Doctor was examined and has issued disability certificate-Exhibit A7 and further deposed that due to the injury claimant right hand and leg have affected and muscle power and muscle tone is lost to some extent and the claimant cannot concentrate on the job and giddiness is present and there is fact disfiguration etc., and assessed the disability at 39%. For disfiguration of face award is being granted under a separate head. Therefore, it cannot be treated as a functional disability. Further P.W.2 himself stated that the nature of disability is only partial permanent disability.

8. P.W.2 Doctor also stated that he has not given any treatment to the claimant, he was only clinically examined the claimant and issued the disability certificate, that too, two years after the date of the accident and therefore, the Tribunal has rightly come to the conclusion and assessed the disability as a partial permanent disability and fixed disability at 35% and accordingly, Rs.70,000/- has been awarded.

9. Taking into consideration the disability suffered by the claimant, this Court enhances the percentage of 'disability' to 43% and accordingly, awards an amount of Rs.86,000/- towards disability and towards 'loss of income' for 6 months has been enhanced from 30,000/- to Rs.45,000/- and towards 'extra nourishment' has been enhanced from Rs.5,000/- to Rs.10,000/- and towards 'attender charges' has been enhanced from Rs.6,000/- to Rs.10,000/- and towards 'transportation expenses' has been enhanced from Rs.4,000/- to Rs.10,000/- and towards 'disfiguration of face' has been enhanced from Rs.10,000/- to Rs.15,000/- Hence, total compensation is hereby enhanced to Rs.1,91,000/- from Rs.1,35,000/- as awarded by the Motor Accidents Tribunal. The amount awarded is hereby tabulated:

Heads	Trial Court	High Court
Towards pain and sufferings	Rs. 10,000/-	Rs. 15,000/-
Towards loss of income for 6 months	Rs. 30,000/-	Rs. 45,000/-
Towards Extra Nourishment	Rs. 5,000/-	Rs. 10,000/-
Towards attendant expenses	Rs. 6,000/-	Rs. 10,000/-
Towards transportation expenses	Rs. 4,000/-	Rs. 10,000/-
Towards disability 35% at the rate of Rs.2000/-	Rs. 70,000/-	Rs. 86,000/-
Towards disfiguration of face	Rs. 10,000/-	Rs. 15,000/-
Total	Rs.1,35,000/-	Rs.1,91,000/-

10. The learned counsel for the fourth respondent-Insurance Company stated that the entire award amount has already been deposited and the Insurance Company shall deposit the balance amount if any 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. It is open to the claimant to file petition before the Tribunal for withdrawal of the compensation amount.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

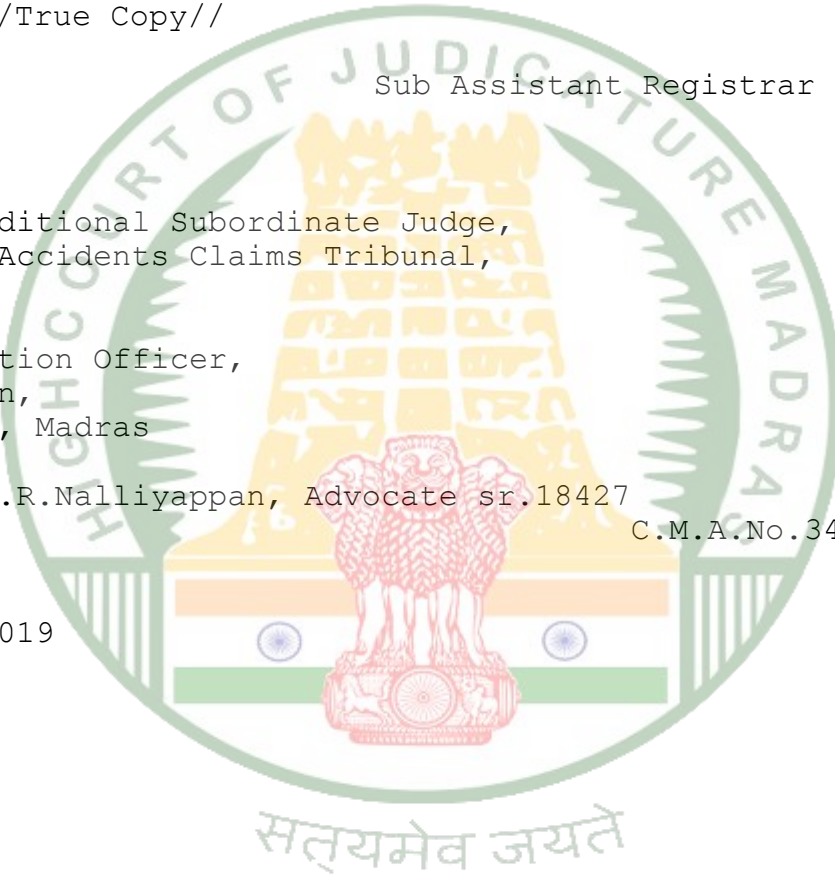
1.The I Additional Subordinate Judge,
The Motor Accidents Claims Tribunal,
Erode.

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

+1cc to Mr.R.Nalliyappan, Advocate sr.18427

C.M.A.No.3486 of 2011

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