

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 14.02.2019

CORAM:
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.3554 of 2011
and
MP.No.1 of 2011

M.Sundara Raj ... Appellant/ Petitioner

Versus

1.Nagaraaj

2.The National Insurance Company Ltd.,
Motor Third Party Claim Cell,
No.751, Mount Road,
Chennai 600 002. ... Respondents/ Respondents

[R1 is exparte before the Tribunal,
Hence, notice may be dispense with]

Prayer: Civil Miscellaneous Appeal filed under section 173
of Motor Vehicle Act, 1988 against the Decree and Judgment
dated 28.07.2010 made in M.C.O.P.No.988 of 2006 on the file
of the Motor Accident Claims Tribunal (III Court of Small
Causes), Chennai.

For Appellant : Mr.V.Chithambaram
for Mr.VaradhaKamraj
For Respondents : Exparte (for R1)
: Mr.G.Udaya Sankar (for R2)

JUDGMENT

This Civil Miscellaneous Appeal has been filed against
the Decree and Judgment dated 28.07.2010 made in
M.C.O.P.No.988 of 2006 on the file of the Motor Accident
Claims Tribunal (III Court of Small Causes), Chennai.

2.The brief facts, which are necessary to decide the
appeal and the relevant particulars, are as follows:-

On 17.01.2006 at 6.30 hours, when the claimant was
riding a Motorcycle bearing Registration No.TN-05-F-8164 at
Ennore High Road, near Patel Nagar pumping station,
Tondiarpet, the first respondent's Water Tanker Lorry
bearing Registration No. TN-05-L-3174 came from the
opposite direction in a rash and negligent manner, hit the
claimant's motorcycle, as a result of which, he sustained

fracture on hip, crush injury in his right hand finger and a contusion on his right leg knee including multiple injuries all over the body. Therefore, the claimant filed a claim petition in M.C.O.P.No.988 of 2006 before the Tribunal claiming a sum of Rs.2,50,000/- as compensation.

3.The Tribunal computed the compensation payable to the claimant under various heads and awarded a sum of Rs.61,883/- as compensation. Not being satisfied with the quantum of compensation, the claimant/appellant herein has preferred this present appeal.

4.The learned counsel appearing for the appellant/claimant would contend that the Tribunal has awarded a meager amount of compensation without considering the deposition of PW.2/Doctor. According to PW2, due to the injuries, the claimant had lost his stiffness at lower back and he is facing difficulty to work by bending, speed walk, climbing stairs and and could not hold any object with stiffness. The Doctor therefore assessed his disability at 35%. Further, the claimant has stated that he took treatment at Apollo Hospital as inpatient from 17.01.2006 to 27.01.2006 for a period of 10 days and for further treatment, he took sick leave from 27.02.2006 to 08.03.2006 for a period of 51 days, totaling 61 days for treatment. Without considering the period of treatment, the Tribunal awarded only a sum of Rs.11,883/- under the head of "leave salary for the treatment period proportionately for 51 days, at the rate of Rs.233/- per day", which is meager. The amount awarded towards transportation is also meager and required to be enhanced.

5.The learned counsel for the second respondent/ Insurance Company would justify the award passed by the Tribunal as the one which is proportionate to the nature of injuries sustained by the claimant and prayed for dismissal of this appeal.

6.On perusing the materials and evidence adduced before the Tribunal, it is seen that the claimant had produced the medical records under Ex.P2, discharge summary, Ex.P3, wound certificate, Ex.P10-X-ray. Though the accident occurred in the year 2006, on the basis of Ex.P4/Salary Certificate of the claimant issued during the year April 2010, the Tribunal arrived at the monthly income of the claimant at Rs.7,000/- per month. It is on the basis of the above, the Tribunal has awarded Rs.11,883/- towards leave salary for the treatment period, which calls for no interference by this Court.

7.It is stated that the Tribunal has awarded Rs.1,000/- per percentage of disability and accordingly, for 35% disability, a sum of Rs.35,000/- was awarded. Having regard to the nature of injuries sustained by the claimant and the period of his hospitalisation, this Court feels that a sum of Rs.1,500/- per percentage of disability could be awarded to the claimant. Accordingly, this Court award a sum of Rs.52,000/- (35 X 1500) towards disability.

8.Taking note of the fact that the claimant had undergone 51 days of treatment, this Court is of the view that the Tribunal has awarded lesser amount towards transportation and Extra nourishment, which are hereby enhanced at Rs.10,000/- and Rs.7,000/- respectively. The Tribunal did not award any amount towards Attendant charges, which is fixed at Rs.9,000/- Accordingly, the compensation amount awarded by the Tribunal is enhanced from Rs.61,833/- to Rs.95,383/- as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Leave Salary for the treatment period proportionately for 51days, at the rate of Rs.233/- per day	Rs.11883/-	Rs.11883/-
Transportation	Rs.2,000/-	Rs.10,000/-
Pain and suffering	Rs.5,000/-	Rs.5,000/-
Extra nourishment	Rs.3,000/-	Rs.7,000/-
Disability	Rs.35,000/-	Rs.52,500/-
Attendant charges	-	Rs.9,000/-
Total	Rs.61,883/-	Rs.95,383/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation amount of Rs.61,883/- awarded by the Tribunal is hereby enhanced to Rs.95,383/-, with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation. It is stated that the second respondent/Insurance company has already deposited the amount awarded by the Tribunal. Hence, the second respondent/Insurance company is directed to deposit the enhanced award amount determined in this appeal, along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the appellant/claimant is permitted to withdraw the same, after adjusting the amount if any, already withdrawn. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation.

No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Ccc)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Motor Vehicles Accident Claims Tribunal
(III Court of Small Causes), Chennai.

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

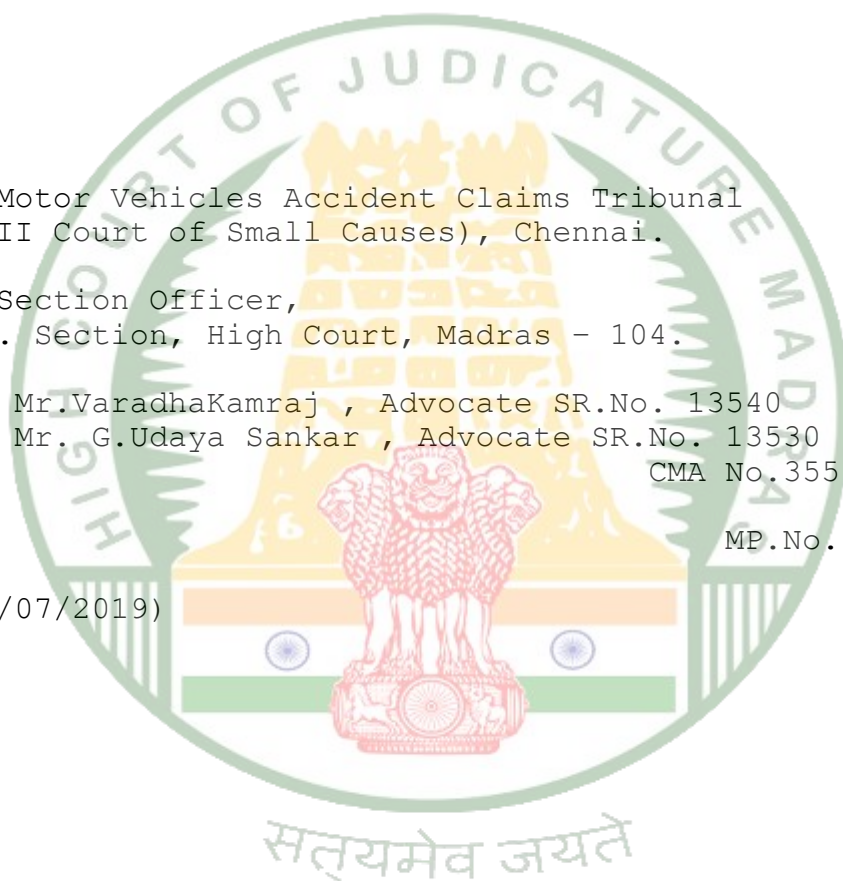
+lcc to Mr.VaradhaKamraj , Advocate SR.No. 13540

+lcc to Mr. G.Udaya Sankar , Advocate SR.No. 13530

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A.SK(04/07/2019)



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