

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2516 of 2013

Sankar ... Appellant/Petitioner/claimant

Vs

1. Ramalingam

2. The Manager

The National Insurance Co.Ltd.,

Villupuram

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Article 173 of Motor Vehicles Act 1988, against the Judgement and decree dated 17.01.2013 in MACTOP.No. 86 of 2011 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Villupuram.

For Appellant : Mr.S.Kalyanaramam

For Respondents : Mr.S.Vadivel
for R2
Mr.S.C.Viswanath
for R1.

J U D G M E N T

This appeal has been filed by the appellant/claimant seeking enhancement of the compensation awarded by the Motor Accidents Claims Tribunal/ Chief Judicial Magistrate, Villupuram in MACTOP.No. 86 of 2011, dated 17.01.2013.

2. It is the case of the appellant/claimant that on 24.05.2008, at about 08.30 am, he was riding a TVS Suzuki bearing Registration No.PY 02 A 8622 on Thavalakuppam - Madukarai road, near Siva Wire Production Company at Kalmandapam and at that time, an Auto Rickshaw bearing Registration No.PY 01 R 9374 driven by its driver in a rash and negligent manner, came in the opposite direction and hit the TVS Suzuki. Due to the accident, the appellant / claimant sustained grievous injuries all over his body. According to the appellant / claimant, the rash and negligent driving of the driver of the Auto Rickshaw was the cause of the accident. Hence, he filed a claim petition before the Tribunal, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him.

3. Before the Tribunal, on the side of the appellant, PW1 & PW2 were examined and Exs.P1 to P16 were marked. On the side of the respondents, no oral or documentary evidence was marked.

4. The first respondent remained absent before the Tribunal and therefore, he was set exparte. The learned Chief Judicial Magistrate, Villupuram vide decree and Judgment dated 17.01.2013, awarded compensation of Rs.26,000/- together with interest at the rate of 7.5% per annum to the claimant.

5. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come forward with this appeal.

6. The learned counsel appearing for the appellant would submit that the Tribunal has erred in not awarding any compensation on the head of permanent disability, more particularly, when PW2 had given evidence regarding the extent of disability and when the disability had been established through the evidences produced in Exs.P6, P14 & P15 respectively. The learned counsel further submitted that the Tribunal failed to appreciate that by reason of head injury, the appellant had suffered neurological problems as noted by the Neurologist in Ex.P14. The learned counsel also submitted that the appellant had been hospitalized for a total period of 7 days and the Tribunal has not awarded a reasonable compensation towards pain and sufferings. Hence, he prayed for enhancement of compensation.

7. Per contra, the learned counsel appearing for the second respondent submitted that the Tribunal after considering both oral and documentary evidences in a proper perspective, awarded compensation, which is not meagre. The appellant / claimant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8. Heard the learned counsel for the appellant / claimant as well as the first, second respondents and also perused the materials available on record before this Court.

9. From the claim petition, it is seen that the appellant / claimant was a centering worker, aged 34 years on the date of the accident, earning a sum of Rs.250/- per day. A perusal of the Discharge Summary (Ex.P6) issued by Krishna Hospital, Cuddalore shows that the appellant had sustained scalp injury. From the Disability Certificate (Ex.P14) it is seen that the appellant had sustained Head injury with fracture of frontal bone right and deep lacerated wound scalp. It was also clinically found that impaired concentration and attention and altered memory. Dr.Joseph Chandran (PW2) had assessed the disability at 25%. However, the Tribunal has not awarded any compensation under the head disability. Considering the nature of injuries, this Court is inclined to fix the percentage of disability at 20%. The accident is of the year 2008 and hence, a sum of Rs.2,000/- per percentage of disability is awarded. Therefore, Rs.40,000/- is awarded towards disability. From the materials on record, it is seen that the appellant had taken treatment at various Hospitals. The Tribunal has not awarded any amount towards transportation, extra nourishment, attender's charges and damage to clothes and articles. Considering the year of the accident, Rs.5,000/-, Rs.5,000/-, Rs.5,000/- and Rs.1,000/- are awarded towards transportation, extra

nourishment, attender's charges and damage to clothes and articles respectively. The Tribunal also not granted any amount towards loss of income. In view of the nature of injuries, the appellant would not have attended to his normal work atleast for 2 months. In the absence of evidence, Rs.4,500/- per month is fixed as notional income and a sum of Rs.9,000/- is awarded towards loss of income for 2 months. All the other heads awarded by the Tribunal are just and reasonable and therefore no interference is needed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1	Loss of income	Nil	9,000
2	Transportation	Nil	5,000
3	Extra nourishment	Nil	5,000
4	Damage to clothes	Nil	1,000
5	Medical Expenses	11,000	11,000
6	Pain and sufferings and mental agony	15,000	15,000
7	Disability	Nil	40,000
8	Attender's charges	Nil	5,000
	Total	Rs.26,000/-	Rs.91,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.26,000/- is hereby enhanced to Rs.91,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant / claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent / Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, to the credit of MCOP.No.86 of 2011 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Villupuram within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant / claimant is permitted to withdraw the modified award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

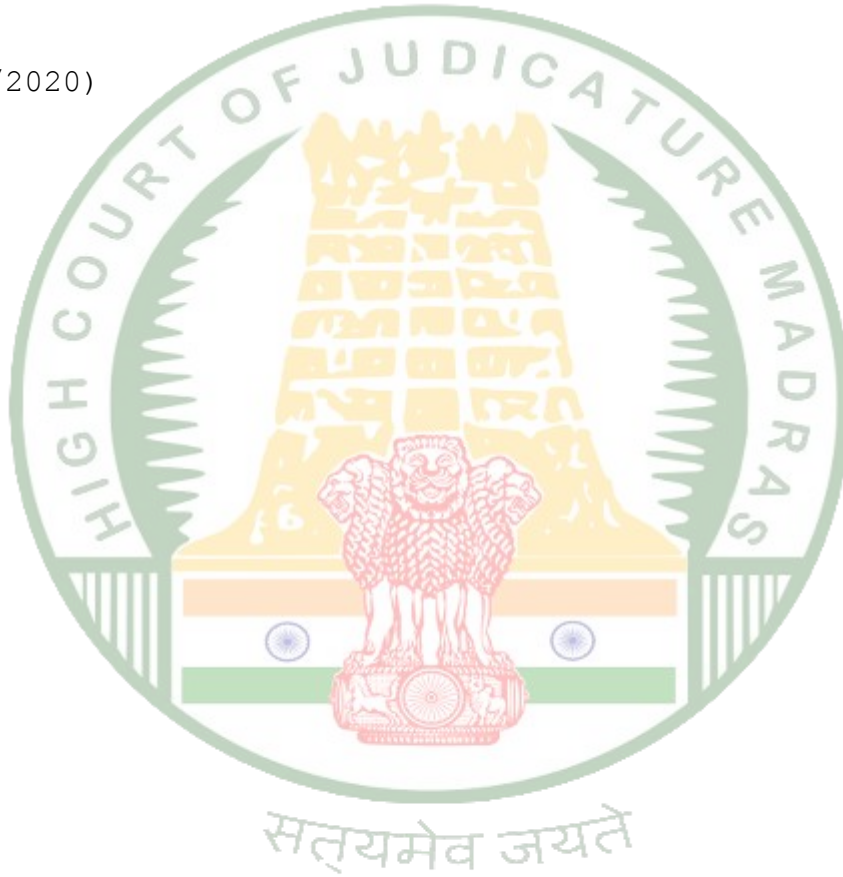
1. The Motor Accidents Claims Tribunal/
Chief Judicial Magistrate, Villupuram.

2. The Section Officer,
VR Section, High Court, Madras.

+lcc to Mr.S.Vadivel, Advocate SR.No.101593

C.M.A.No.2516 of 2013

KK (CO)
GMY (11/11/2020)



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