

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3224 of 2012

Maha Devaya
Appellant/Claimant

...

Vs.

1.V.Dinesh

2.The Branch Manager,
Reliance General Insurance Company Ltd.,
Branch Office,
Madurai. ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, aggrieved by the Award and Decree dated 23.12.2011 made in M.C.O.P.No.225 of 2007 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Hosur.

For Appellant : Mr.M.Sriram
For Respondents : Mr.B.Thirumalai for R1
Mr.S.Arunkumar for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed aggrieved by the Award and Decree dated 23.12.2011 passed in M.C.O.P.No.225 of 2007 by the Motor Accident Claims Tribunal/Subordinate Court, Hosur, by raising various grounds.

2.The case of the appellant is that on 25.04.2007, the petitioner was proceeding in the TVS XL Super moped bearing Registration No.TN-24-X-2903 as rider along with his son and the said moped was driven by him proceeding from Denkanikottah to go to Osahalli Village at about 7.30 p.m. in between Peria Bodhu Kotta to Chinna Boodhu Kotta, near S.L.B. Brick Chamber, the Bajaj Minidor Auto bearing Registration No.TN-29-J-0326 belonging to the first respondent and insured with the second respondent came and hit the said moped. Due to said the impact,

the claimant and his son were thrown out and appellant sustained right metacarpals are fractured, sustained injuries over his left knee joint, right index finger and also sustained multiple injuries all over the body was found. He was admitted in Government Hospital, Hosur and shifted to St.John's Hospital, Bangalore and then private nursing home, Hosur. As the claimant had sustained injuries, he claimed a sum of Rs.3,00,000/- as compensation before the Lower Court.

3.A counter affidavit has been filed by the second respondent denying the said averments and submitted that the accident had occurred only due to the negligent driving of the appellant and there is no fault on the part of the first respondent's driver. Further, the alleged age, income and occupation of the appellant are incorrect and the amount of compensation claimed is also very high.

4.Before the Court below the appellant/claimant had marked Exs.P1 to P19 and had examined himself, his son and one Gandhi as as witnesses on his side. On the side of the respondents neither any witness nor any document was marked.

5.The Court below after considering the pleadings, oral and documentary evidence allowed the petition in favour of the appellant and awarded Rs.20,000/- as compensation. Aggrieved by the award, the appellant/claimant has filed the present appeal.

6.Heard the learned counsel for the appellant, the learned counsel for the first respondent and the learned counsel for the second respondent and perused the materials available on record.

7.The Appellant submitted that Maha Devaya was a retired VAO and 18% disability has been fixed by the Doctor but in this case the appellant was not in a position to produce any medical documents to prove that he has spent an amount for the medical expenses and in the absence of any material evidence would show that he has spent money as it has seen from the document he has taken medical leave and hence money would have spent by the Government itself as he being the Government employee and hence there was no medical bill. He also admitted that he has drawing pension after his retirement and hence no loss of income for the said person.

8.The Court below has erroneously not considered the disability factor and other materials available on record. After considering the said evidence, this Court is of the view that for 18% disability fixed by Doctor is Rs.2,000/- per percentage has to be awarded hence $(18\% \times \text{Rs.}2,000 = \text{Rs.}36,000)$ is fixed

and Rs.5,000/- towards pain and suffering for the injury sustained and Rs.2,000/- towards transport expenses for the treatment at hospital is awarded. Hence, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Pain and Sufferings, Nourishment and Medical Expenses	Rs.20,000/-	Rs.36,000/- (18% permanent disability x Rs.2,000/- = Rs.36,000/-)
2.	Pain and Suffering	-	Rs.5,000/-
3.	Transport Expenses	-	Rs.2,000/-
	Total	Rs.20,000/-	Rs.43,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Accordingly, the second respondent insurance company is directed to deposit Rs.43,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization as fixed by the Tribunal, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. In case, if any amount has already been deposited by the second respondent insurance company, they can deposit only the remaining amount within the aforesaid period. After the entire amount has been deposited by the second respondent insurance company, the Appellant can withdraw the same by filing a formal petition before the concerned Court.

Sd/-

Asst.Registrar (CS V)

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Sub Asst. Registrar

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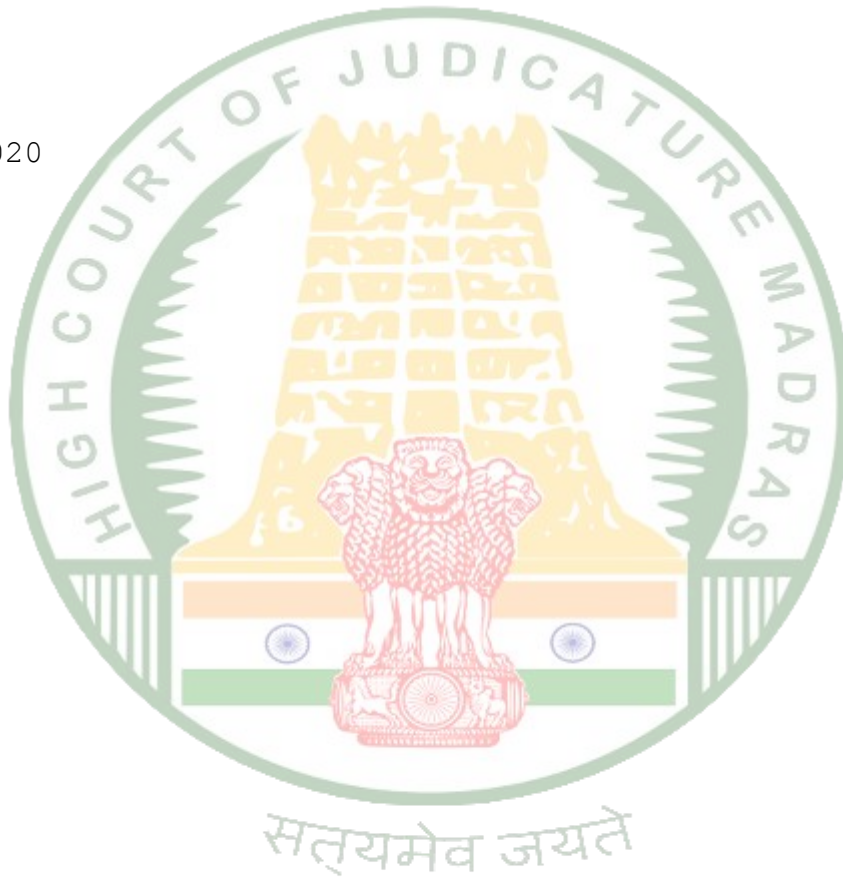
To

1.The Motor Accident Claims Tribunal/
Subordinate Court, Hosur.

+1 cc to Mr.Mukund R.Pandiyan Advocate sr103726

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