

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2019

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKA RAMAN

C.M.A.No.884 of 2011

Krishnan

... Appellant / Petitioner

vs.

1. V.Mariammal

2. The New India Assurance Co. Ltd.,
No.45, 2nd Line Beach, Moore Street
Chennai-1 ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to allow the appeal and set aside the fair and decreetal order made in M.C.O.P.No.2005 of 2006 dated 30.07.2009 on the file of the II Court of Small Causes, Chennai.

For Appellant : Mr.A.N.Viswanatha Rao

For Respondents : Mr.J.Chandran for R2
R1 - Exparte

JUDGMENT

The claimant / appellant has filed this Civil Miscellaneous Appeal under Section 173 of Motor Vehicles Act, 1988 to allow the appeal and set aside the fair and decreetal order made in M.C.O.P.No.2005 of 2006 dated 30.07.2009 on the file of the II Court of Small Causes, Chennai.

2.The case of the appellant / claimant is that the claimant was working as a load man at the time of the accident and was earning Rs.200/- per day. On 31.12.2005 at about 6.30 a.m. when the claimant was riding his cycle on Wallajabad to Vandalur

Road, near Panruti Kandigai, the Lorry No.TN-04-P-1939 was driven by its driver in a rash and negligent manner and dashed against the cycle and caused the accident. The Lorry driver is responsible for the accident. The 1st respondent as the owner and the 2nd respondent as the insurer are jointly liable to pay compensation to the petitioner. Accordingly, the claimant prays for an award of Rs.10,00,000/-.

3.In support of the claim, four witnesses had been examined and Exhibits P1 to P11 had been marked, the details of which are as follows:-

Ex.No.	Details
P1	Discharge Summary
P2	Copy of F.I.R.
P3	Outpatient Book
P4	Scan bill
P5	Outpatient Chit
P6	Optical Card
P7	Disability Certificate
P8	Disability Certificate
P9	X-ray
P10	Disability Certificate
P11	X-ray

On behalf of the New India Assurance Company Ltd., no witnesses were examined and no Exhibits were marked before the Tribunal.

4.The Tribunal based on the oral evidence of the witnesses, the F.I.R. and taking note of the fact that the claimant has sustained one simple and three grievous injuries and due to the injuries he became disabled, arrived at a conclusion that due to the rash and negligent driving of the Lorry driver the accident occurred and the Lorry driver alone was responsible for the accident and consequently liability was fixed on the 2nd respondent, to compensate the claimant.

5.Based on the oral and documentary evidence, the Tribunal granted the following amount as compensation with interest at 9.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of Earning	Rs. 7,500/-
2	Transport	Rs. 2,000/-
3	Extra Nourishment	Rs. 2,000/-
4	Damage to body	Rs. 2,000/-
5	Medical Bills	Rs. 1,500/-
6	Disability (permanent)	Rs. 1,45,500/-
7	Pain & Suffering	Rs. 32,000/-
8	Loss of Amenities	Rs. 10,000/-
9	Loss of Expectation of life	Rs. 10,000/-
	Total	Rs. 2,12,500/-

6. The learned counsel for the appellant / claimant would submit that the Motor Accident Claims Tribunal has not considered that the petitioner was hospitalised for 30 days and was continued to be in treatment for a period of more than 6 months and failed to award the claim under the head of Transport to hospital. The attendant charge of Rs.5,000/- is too low as the petitioner was hospitalised for a period of 30 days and was under treatment for more than 6 months. The injuries sustained by the claimant are grievous in nature and while he was under treatment he was also affected by fits and developed nervous problem. The Tribunal has not appreciated the disabilities suffered by the petitioner which has been marginally assessed at 45% partial permanent disability regarding the bone fracture and 30% disability for vision power and nervous problem also developed. The Tribunal ought to have applied the multiply theory as the petitioner and his family future has become a question. Being a load man, no one will engage his service who is having so much of complications. Hence, the learned counsel for the claimant has sought for allowing of the Civil Miscellaneous Appeal.

7. On the other hand, the learned counsel for the 2nd respondent would submit that the compensation awarded by the Tribunal is adequate and not too low. The Tribunal was correct in awarding the compensation under various heads as the same was awarded after taking note of the fact that the claimant has sustained one simple and three grievous injuries. The petitioner without observing the traffic rules and regulation suddenly came at the middle of the road and collided with the Lorry due to which the claimant sustained simple injury. The quantum of compensation claimed by the petitioner on various heads is high. The appellant alone was responsible for the accident and consequently liability was fixed on the 2nd respondent to

compensate the claimant which cannot be faulted with. Thus, the learned counsel for the 2nd respondent has sought for dismissal of the above Appeal.

8. Heard the counsel on either side.

9. Considering the fact that the accident took place due to the rash and negligent driving on the part of lorry driver of the vehicle. Hence, the Trial Court has given categorical findings and awarded a sum of Rs.2,12,500/-. This appeal has been filed only to enhance the quantum of compensation awarded by the Trial Court. The Tribunal has awarded a sum of Rs.2,12,500/- on various heads. However, on extra nourishment the Tribunal awarded Rs.2,000/- which has been enhanced to Rs.20,000/- (Rupees Twenty Thousand only). The awarded amount of Rs.10,000/- for loss of amenities enhanced to Rs.15,000/- (Rupees Fifteen Thousand only). Since the claimant contended that for the purpose of attendant charges and for future medical expenses some amount shall be awarded to him, Rs.15,000/- (Rupees Fifteen Thousand only) has been awarded under the head of attendant charge and Rs.12,000/- (Rupees Twelve Thousand only) is awarded for the purpose of future medical expenses. Accordingly, the award amount is fixed at Rs.2,62,500/- (Rupees Two Lakhs Sixty Two Thousand and Five Hundred only), thereby, enhancing a sum of Rs.50,000/-.

10. The New India Assurance Company Ltd., the 2nd respondent is hereby directed to deposit the enhanced amount of Rs.50,000/- within a period of eight weeks from the date of receipt of a copy of this order along with the interest at the rate of 7.5% from the date of claim petition.

11. Accordingly, this Civil Miscellaneous Appeal is allowed to the limited extent indicated above. Since this Court has already directed to deposit the entire award amount, the claimant is now permitted to withdraw the deposited amount by filing appropriate application before the Tribunal. There will be no order as to costs in this appeal.

12. The appellant / claimant is directed to pay the additional court fee for the enhanced compensation if any and Registry is directed to draft the decree only after the receipt of court fee.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal
II Court of Small Causes, Chennai.

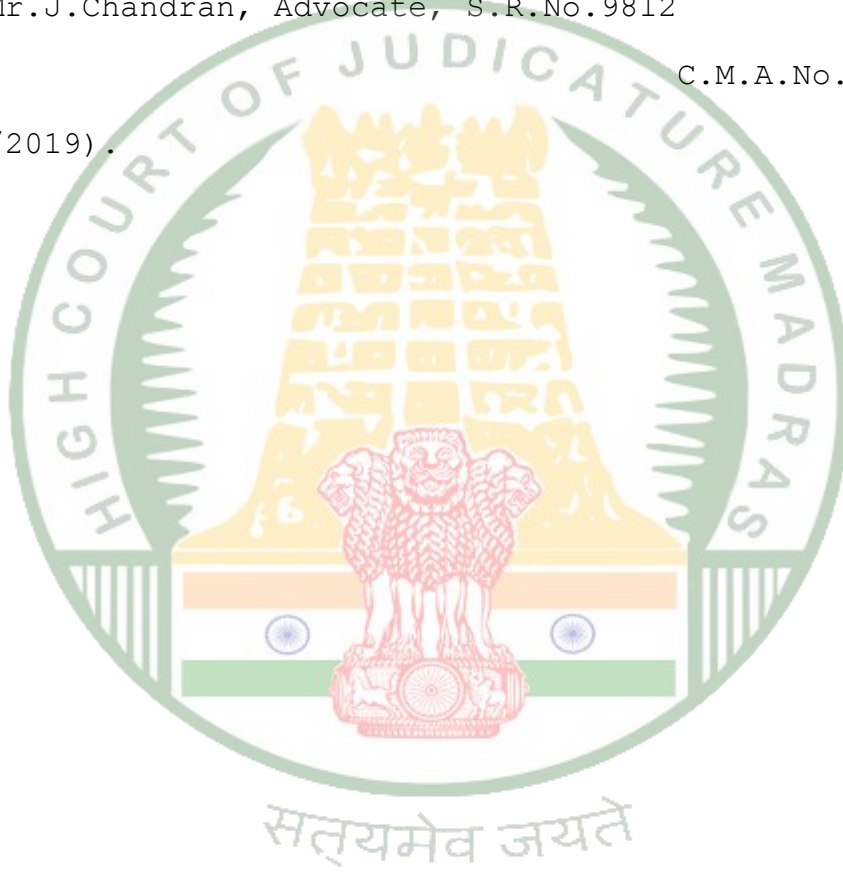
copy to: The Section Officer,
VR Section,
High Court, Madras-104.

+2 ccs to Mr.A.N.Viswanatha Rao, Advocate, S.R.No.9579

+1 cc to Mr.J.Chandran, Advocate, S.R.No.9812

VG-II(CO)
SSM(12/04/2019).

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