

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2742 of 2013

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... Appellant

Vs

1. Balakrishnan

2. The Divisional Manager,
Oriental Insurance Co. Ltd.,
HUB, 3rd Party Claims,
Vijayalakshmi Complex First Floor,
No.32/13, Phase No.2,
Sathuvachari, Vellore.

...Respondents

(R1 remained exparte before the Tribunal)

Civil Miscellaneous Appeal filed under Article 173 of Motor Vehicles Act 1988, against the Judgment and decree dated 15.09.2012 in MACTOP. No.274 of 2011 passed by the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Tiruvannamalai.

For Appellant : Mrs.Subadra

For Respondents : Mr.Elveera Ravindran - R2

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, Tiruvannamalai in MACTOP. No.274 of 2011 dated 15.09.2012 for enhancement of compensation.

2. It is the case of the appellant/claimant that on 14.03.2011 at about 8.00 P.M., the appellant/claimant was walking near Vettavalam Milk Store Bus stop on the left side, at that time, the first respondent was riding a motor bike bearing Registration No.TN 25 Q 2322 and insured with the second respondent, on the above said road, proceeding from north to

south, in a rash and negligent manner, dashed against the appellant/claimant. Due to the accident, the appellant sustained multiple injuries all over his body. Thereafter, the appellant was admitted in the Government Hospital at Tiruvannamalai as in-patient. Thereafter, he has admitted in the private hospital for further treatment. Hence, the appellant has filed a claim petition before the Tribunal against the respondents, claiming a sum of Rs.5,00,000/- as compensation.

3. Before the Tribunal, during trial, in order to prove his case, the appellant has examined himself as P.W.1 and the Doctor (P.W.2) and marked as many as eight documents viz., Exs.P1 to P8. On the side of the respondents, two witnesses were examined and eight documents were adduced.

4. After analyzing the oral and documentary evidences and considering the pleadings made by both the parties, the Tribunal has come to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the motor bike. Therefore, the Tribunal has awarded a sum of Rs.1,43,000/- as compensation to the claimant.

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

6. The learned counsel for the appellant would submit that the appellant is an agriculturist, aged about 60 years and earned a sum of Rs.5,000/- per month and the appellant is a sole breadwinner of his family. The award amount of Rs.1,43,000/- passed by the Tribunal is very meager and the same has been passed without considering the injuries sustained by the appellant. The Tribunal has reduced the percentage of the disability, assessed by the Doctor and awarded a sum of Rs.1,00,000/- is unfair and the amount awarded towards extra nourishment and pain and suffering are very meager. Hence, the learned counsel for the appellant prays for enhancement of compensation.

7. Per contra, the learned counsel appearing for the second respondent / Insurance Company would submit that the respondent has denied all the averments made by the appellant in the claim petition and filed a counter to that effect. The learned counsel would further state that the accident had occurred due to the rash and negligent driving of the rider cum owner of the two wheeler. He has no valid driving license and he has only a light motor vehicle license at the time of accident. The Tribunal has awarded a sum of Rs.1,43,000/- is excessive and there is no basis for awarding such compensation. Hence, the learned counsel prays to dismiss the appeal.

8. Heard the learned counsel for the appellant as well as the respondent and also perused the available materials on record before this Court.

9. The appellant is the claimant and he examined himself as P.W.1 before the Tribunal. He deposed before the Tribunal that the accident had occurred only due to the rash and negligent driving of the rider of the motor bike. The learned counsel for the second respondent Insurance Company has also submitted that the rider of the motor bike viz., first respondent has no valid driving license at the time of the accident and the evidence of the Doctor (P.W.2) remained unchallenged, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the rider of the Bike bearing Reg.No.TN-25-Q-2322. Hence, this Court is not inclined to interfere with the said finding.

10. On careful reading of the records, it is seen that the appellant is the claimant, aged about 60 years, at the time of the accident, who is an agriculturist, he could not able to do his work after accident, as he has sustained grievous injuries all over his body.

11. On a perusal of the medical report, it is found that the Doctor, who treated the injured, assessed the disability at 60%. But, the Tribunal has reduced the same and awarded a sum of Rs.1,00,000/- towards permanent disability, which is very low. Considering the injuries sustained by the appellant, this Court is inclined to enhance the same for a sum of Rs.1,50,000/- towards permanent disability. Regarding the other heads viz., extra nourishment, transportation, pain and sufferings and loss of amenities, respectively, are reasonable and there is no need to interfere with it. The appellant/claimant had admitted in the Government Hospital, Tiruvannamalai as in-patient. Therefore, this Court is awarded a sum of Rs.2,000/- towards attender's charges.

12. The award amount of compensation of Rs.1,43,000/- is enhanced to Rs.1,95,000/- under the following heads :-

Sl.No	Heads	Amount awarded by the Trial Court (Rs.)	Amount awarded by this Court (Rs.)
1	Transportation	3,000/-	3,000/-
2	Permanent Disability	1,00,000/-	1,50,000/-
3	Pain and Sufferings	25,000/-	25,000/-
4	Extra nourishment	5,000/-	5,000/-
5	Loss of amenities	10,000/-	10,000/-
6	Attender's charges	----	2,000/-
	Total	1,43,000/-	1,95,000/-

13. With the above modification, the order of Tribunal in MACTOP No.274/2011 is modified and this appeal is partly allowed.

14. The Compensation amount of Rs.1,43,000/- is enhanced to Rs.1,95,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The second respondent -Insurance Company is directed to deposit the entire award amount as ordered by this Court with interest and thereafter, recover it from the first respondent, after deducting the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant / claimant is permitted to withdraw the same, on making proper application before the Tribunal. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

rli

To

The Motor Accidents Claims Tribunal/
Chief Judicial Magistrate, Tiruvannamalai.

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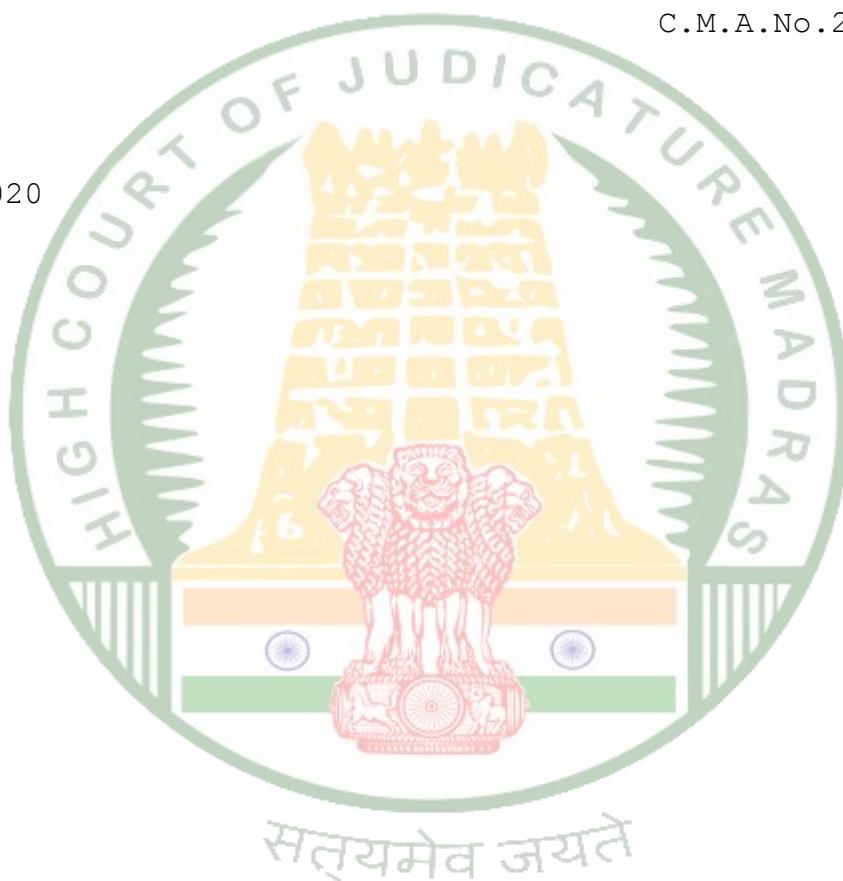
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The Section Officer
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High Court,
Madras

+1 cc to M/s.M.Malar Advocate sr101898

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