

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.3588 of 2013

Sathishkumar

... Appellant/Petitioner

- Vs -

1. M/s.Tamil Nadu Waste Management Ltd.,
Sur.No.29/3, Kinar Village,
Madhuranthagam Taluk.
2. Reliance General Insurance Company Ltd.,
Plot No.2504, Raj's Towers, 2nd Avenue,
Anna Nagar, Chennai - 40.
[The first respondent ex-parte in lower court, hence
notice may be dispensed with]

... Respondent/Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 19.08.2013 made in M.C.O.P.No.5336 of 2011 on the file of the Motor Accident Claims Tribunal (III Small Causes Court), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : R1- Exparte
Mr.S.Arun Kumar for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant, aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal (III Small Causes Court), Chennai, dated 19.08.2013 made in MCO.P.No.5336 of 2011 by raising the following ground:-

1. The Court below has not waived the facts and evidences and wrongly reduced the compensation on various heads viz., disability, medical expenses, pain and sufferings, loss of earnings, transportation and nutrition and he prayed for enhancement of the same.

2. The case of the appellant is that on 18.07.2011 at about 18.00 hours, while he was riding a motorcycle bearing Registration No.TN-05-AJ-2759 near Enathur in Bangalore to Chennai National Highway, Opposite to Meeakshi Medical College Hospital, a Tata 407 Van bearing Registration No.TN-19-Y-1085 was driven by its driver in a rash and negligent manner from wrong side, dashed against him and thereby, the appellant sustained grievous injuries and also fracture in his right hand. A case in Crime No.446 of 2011 was registered against the said vehicle. The appellant/claimant further submitted that due to the said accident, he had sustained fracture in the right hand and claiming a sum of Rs.3,00,000/- as compensation.

3. On the side of the appellant/claimant, Exs.P1 to P8 were marked and he examined himself as witness and one Dr.Saichandran as PW-2. On the side of the respondent, neither any witness has been examined nor any document was marked as evidence.

4. A counter statement was filed by the second respondent denying all the averments stating that the amount claimed Rs.3,00,000/- is fanciful, exaggerated and arbitrary and denied the accident itself and also stated that the accident had happened only due to the fault of the appellant herein and the respondent has not guilty of any negligence and even contributory negligence to the accident. The loss of earnings and other amounts raised by the claimant was denied as false. The owner of the vehicle in the said accident has not entered appearance in the above case and the second respondent is not liable to pay any amount as compensation.

5. The Court below, after considering the pleadings and the evidences produced before it, awarded a sum of Rs.70,500/- (Rupees Seventy Thousand and Five Hundred only) with interest at 7.5% per annum from 12.12.2011 till the date of deposit. Aggrieved by the quantum, the claimant filed the present appeal.

6. The learned counsel for the appellant would submit that the appellant was of young age and he had lost his earning capacity as he sustained a fracture in right hand and not able to use the same as earlier and he prayed for enhancement of amount on the heads of permanent disability, loss of income, transport, medical expenses, extra nourishment and pain and sufferings. He also pointed out that for disability factor, the Tribunal has to fix the same as 35% as per the certificate, but the Tribunal has taken only 25% and awarded a meagre amount and prayed for enhancement of the same.

7. The learned counsel for the second respondent submitted that the appellant has to prove that the existence of valid insurance policy, RC Book, driving licence, badge etc. He would

submit that the accident had occurred only due to the fault of the appellant and he was also guilty of contributory negligence. The Tribunal has awarded the compensation of a sum of Rs.70,500/-, which does not warrant any interference.

8. On perusal of the entire materials, this Court is of the view that the Tribunal has fixed the income as Rs.4,500/- as the appellant was the partner of the firm by name S.S.S.Hydorlic, but during the period of treatment, the appellant would not have gone for regular work atleast for two months and the same has to be considered.

9. Hence, this Court is inclined to modify the amounts awarded as compensation by the Tribunal. The final amount of compensation now determined is tabulated below:-

Heads	Amount (Rs.)
Loss of Income [4500 X 2]	9,000
Transport to Hospital	5,000
Extra nourishment	5,000
Medical Expenses	3,000
Pain and Sufferings	10,000
Permanent disability	75,000
Loss of amenities	5,000
Total	1,12,000

10. Accordingly, this Civil Miscellaneous Appeal is partly allowed. The second respondent is directed to deposit a sum of Rs.1,12,000/- (Rupees One lakh and twelve Thousand only), less if any amount already deposited, with interest at 7.5% per annum, within eight weeks from the date of receipt of a copy of this order, whereupon the claimant would be entitled to withdraw same by filing formal application. No costs.

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Sd/-
Assistant Registrar

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Sub Assistant Registrar

To

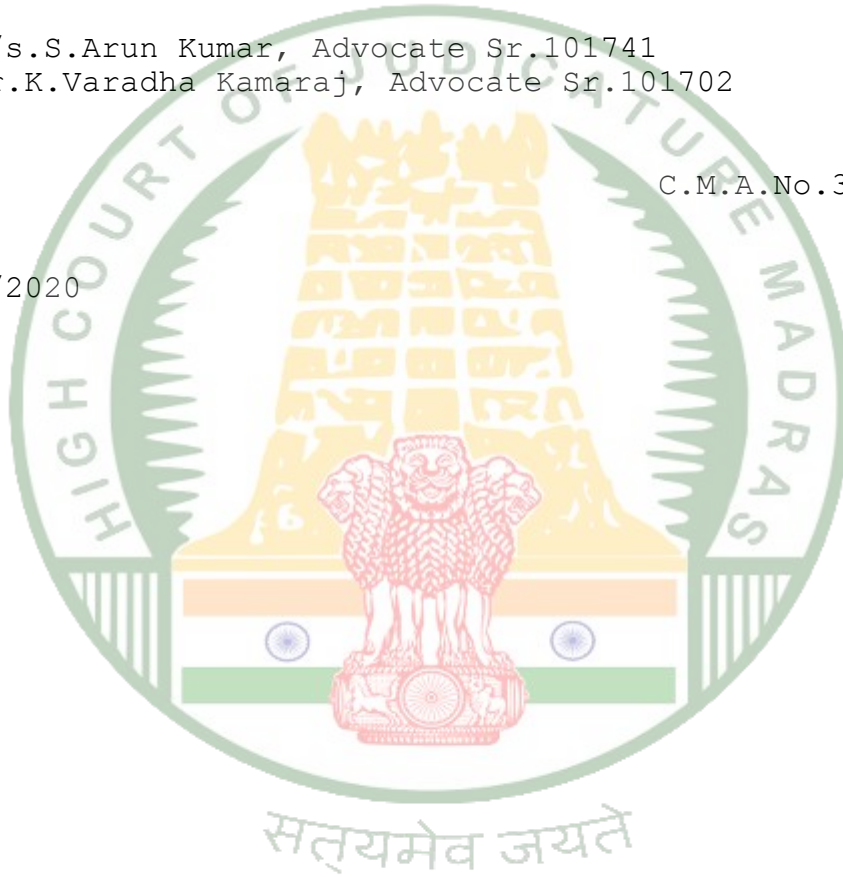
1. The III Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.S.Arun Kumar, Advocate Sr.101741

+1cc to Mr.K.Varadha Kamaraj, Advocate Sr.101702

C.M.A.No.3588 of 2013

ad[co]
srg 23/09/2020



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