

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2019

CORAM:

THE HON'BLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

C.M.A.No. 3778 of 2013

Govindarajulu

.... Appellant/Petitioner

Vs.

1. A.P. Subramaniam

2. The Reliance General Insurance Co.Ltd.,
No. 628, II Floor,
Balmer Lourie House, Anna Salai,
Chennai.

.... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 30.04.2013 and made in MCOP No. 3588 of 2012 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant : Mr.F. Terry Chellaraja

Respondents : Mr. S. Arunkumar for R-2
R-1 Served-No Appearance.

J U D G M E N T

Seeking enhancement of compensation, the claimant/injured is before this Court, challenging the judgment and decree dated 30.04.2013 passed in MCOP No.3588 of 2012 on the file the Motor Accident Claims Tribunal V, Court of Small Causes, Chennai.

2. It is the case of the claimant/appellant before the Tribunal that on 07.07.2012 at about 4.00 p.m., when he was about to cross the road opposite to LG Show Room at Nungambakkam High Road, a TVS Apache Motor Cycle bearing Registration No.TN-39-AY-6939 dashed against the claimant. Stating so, the first respondent as the owner and the second respondent as the insurer of the vehicle are jointly and statutorily liable to pay the compensation, the claimant has filed a claim petition for a sum of Rs.8,00,000/-.

3. The said claim was disputed by the second respondent by filing a detailed counter affidavit. The Tribunal, based on the evidence and documents available on record held that there is no

contra evidence adduced on the side of the respondents to disprove the negligence and ultimately has fastened the liability on the respondents herein and arrived at the quantum at Rs.1,45,000/- under the following heads:-

Loss of earning	-	Rs. 6,000/-
Transport to Hospital	-	Rs. 10,000/-
Extra nourishment	-	Rs. 7,000/-
Damage to clothes	-	Rs. 1,000/-
Loss of amenities	-	Rs. 10,000/-
Pain and sufferings	-	Rs. 30,000/-
Disability of 45% at Rs.1800/- per percentage	-	Rs. 81,000/-
Total	-	Rs.1,45,000/-

4. Heard both sides.

5. The learned counsel for the appellant/claimant submitted that the quantum arrived at by the Tribunal is too low, which needs considerable enhancement; the Tribunal has not awarded any amount under the head attended charges and the amount awarded under the head disability also needs significant enhancement. In any event, the award passed by the Tribunal needs considerable enhancement.

6. Per contra, the learned counsel for the second respondent/insurance company submitted that the Tribunal has analysed each and every aspects into consideration and has awarded the compensation, which is just and hence, interference is uncalled for. He further submitted that the Tribunal has arrived the quantum item wise and based on the settled principles of law has awarded the compensation.

7. This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

8. It is not in dispute that the injured has sustained comminuted Schatzker type II fracture (lateral tibia condyle fracture depression) and right knee closed reduction bone grafting and cancellous screw fixation in right knee was done and injuries all over the body. Hence, the Doctor has assessed the disability at 55% and the Tribunal has fixed the same at 45%, however, awarding at Rs.81,000/- under the head.

9. This Court is of the view that the amount taken by the Tribunal at Rs.1,800/- is on the lower side, since as per the settled principles of law, the same should be taken at

Rs.2,000/- per percentage of disability and accordingly, the same is taken and the award under the head disability is modified to Rs.90,000/-.

10. It is borne out from the records that the Tribunal has awarded sums of Rs.6,000/-, 10,000/-, 7,000/-, 1,000/-, 10,000/- and Rs.30,000/- towards Loss of income, Transportation, Extra nourishment, Damage to clothes, Loss of amenities and Pain and sufferings respectively. The said sums awarded by the Tribunal are based on II Schedule of the Motor Vehicles Act, weightage of evidence, probabilities of the case and evidence adduced on the side of the claimant, apart from the fact that there was no contra evidence adduced on the side of the second respondent herein.

11. Thus, this Court is of the view that the said sums awarded by the Tribunal commensurate with the settled principles of law and hence they are confirmed as such.

12. In the result, this Civil Miscellaneous Appeal filed by the appellant/claimant is partly allowed by enhancing the total compensation from Rs.1,45,000/- to 1,54,000/-, which is payable with interest, at the rate of 7.5% per annum from the date of petition till the date of deposit. Needless to state that the appellant/claimant is not entitled to receive any interest for the condonation of delay period. The second respondent is directed to deposit the enhanced amount as ordered by this Court within a period of six weeks from the date of receipt of a copy of this judgment, less the amount already deposited if any. The appellant/claimant shall pay the necessary Court fee for enhanced compensation amount before receiving the copy of this judgment. On such deposit being made by the second respondent, the Tribunal shall transfer the total amount to the Savings Bank account of the appellant through RTGS within a period of one week thereafter. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Kv

To

1. The V Judge,
Motor Accident Claims Tribunal,
Court of Small Causes, Chennai.

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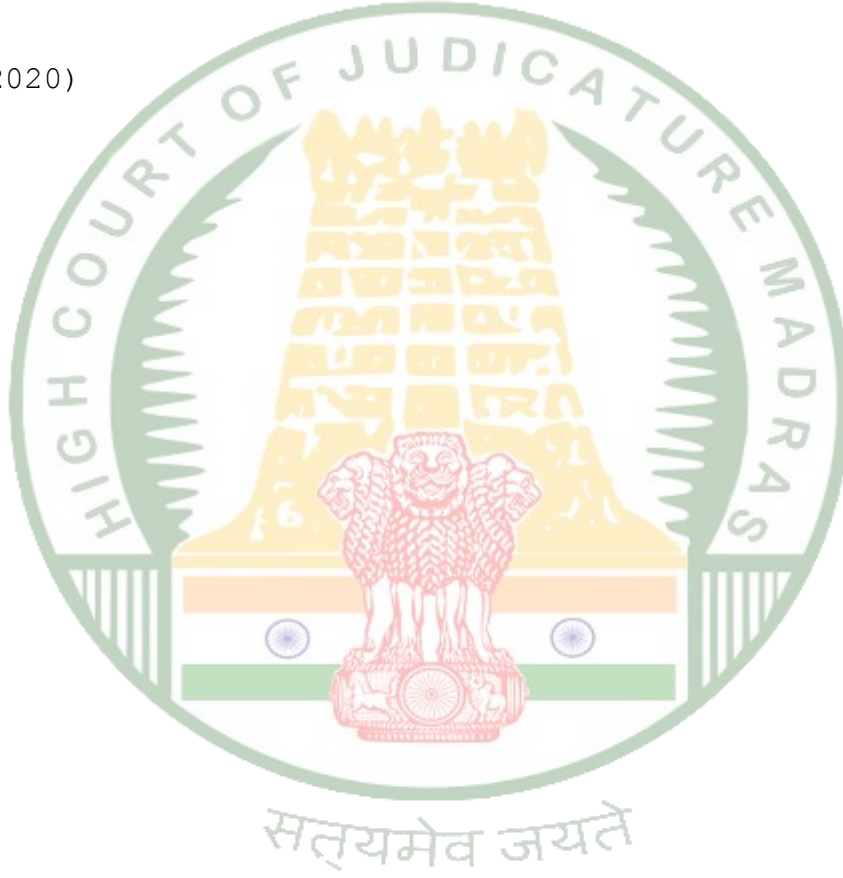
The Section Officer,
V.R. Section
High Court, Madras.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 102972

+1cc to Mr.M.Malar, Advocate, S.R.No. 103039

C.M.A.No. 3778 of 2013

MP (CO)
GN(28/08/2020)



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