

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.01.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.501 of 2013

Perumal

... Appellant

Vs

1.J. Kokila

2.The Division Manager,
United India Insurance Company Limited,
Divisional Office, M.M. Reddy Complex,
Old Bangalore Road, Hosur Post & Taluk,
Dharmapuri District.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and decree dated 11.02.2011 made in M.C.O.T.No.1829 of 2003 on the file of the Motor Accident Claims Tribunal/Principal sub Court, Krishnagiri for enhancement.

For appellant : Mr.M.Sriram
For respondent-1 : No Appearance
For Respondent-2 : Mrs. I. Malar

सत्यमेव जयते

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 Accident Claims Tribunal/Principal subordinate Court, Krishnagiri in MCOP No.1829 of 2003 dated 11.02.2011.

2. It is the case of the appellant that on 28.05.2003 when the the appellant/claimant was travelling in a Tempo bearing Registration No.TN-45-C-6886 belonging to the first respondent, as a cleaner and when the said Tempo was proceeding near Anna Nagar in Krishnagiri to Mathur Main Road, the driver of the tempo drove the vehicle in an uncontrollable speed and dashed against a tamarind tree. As a result of which the appellant sustained grievous injuries and admitted in Government Hospital, Krishnagiri as inpatient. Hence, the appellant has filed a

claim petition before the Tribunal, claiming a sum of Rs.5,00,000/- as compensation.

3. In order to prove her claim, the appellant has examined as many as two witnesses viz., P.W.1 and P.W.2 and marked ten documents viz., Ex.P1 to Ex.P10. On the side of the respondent, no witness was examined and no evidence was adduced. After analyzing the evidences, 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 tempo and awarded a sum of Rs.1,68,200/- as compensation.

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

5. The learned counsel for the appellant would submit that due to the accident, the appellant sustained injuries on his left hand and fracture on his base of 2nd metacarpal left side head injury and compound type II fracture of his radius comminuted left side. After the accident, he is not able to raise or bend his left hand and he was unable to lift or carry any weight in his left hand. He often gets headache and giddiness. Because of this, his future earning power is totally affected. The Tribunal, without considering the said fact, awarded a very low amount as compensation, which warrants of this Court.

6. Per contra, the learned counsel appearing for the respondent/ Insurance Company submitted that the averments in the claim petition are false and the appellant has not produced any documentary evidence to prove his claim and in the absence of any documentary proof the amount awarded by the Tribunal is very excessive. The learned counsel for the respondent would further contend that the nature of injuries and treatment taken by the appellant was considered in detail and the compensation awarded by the Tribunal is not meager and there is no necessity to enhance the amounts and prayed for dismissal of the appeal.

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

8. From the materials available on record it is seen that there was no documentary evidence available to arrive the income of the appellant hence the Tribunal has quantified Rs.6,000/- as partial loss of earning. But, in the claim petition it has been stated that the appellant was doing cleaner work, hence the same is enhanced to Rs.10,000/-. The Tribunal has awarded Rs.5,000/- towards Transport to hospital and extra nourishment. Considering the cost of living prevailing as on date and considering the nature of injuries sustained by the appellant, the same is modified to Rs.5,000/-towards Transport to Hospital and RS.5,000/- towards extra nourishment. The Tribunal has awarded Rs.2,000/- towards Medical assistance and the same is enhanced to Rs.5,000/-. P.W.2/Doctor in his evidence has stated that

Rs.20,000/- will be the future medical expenses to remove the D.C. Plates, but the Tribunal awarded only Rs.10,000/- towards future

medical expenses and the same is enhanced to Rs.20,000/- The amounts granted by the Tribunal in all other heads are just and reasonable and hence, they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl.No	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Partial loss of earnings	Rs.6,000/-	Rs.10,000/-
2	Transport to Hospital and extra nourishment. Transport Extra nourishment	Rs.5,000/-	Rs.5,000/- Rs.5,000/-
3	Pain and suffering	Rs.10,000/-	Rs.10,000/-
4	Medical Assistance	Rs.2,000/-	Rs.5,000/-
5	Permanent Disability	Rs.90,000/-	Rs.90,000/-
6	Medical Expenses	Rs.45,133.83/-	Rs.45,133.83 /-
7	Future Medical Expenses	Rs.10,000/-	Rs.20,000/-
	Total	Rs.1,68,133.83	Rs.1,90,133.83

9. With the above said modification this Civil Miscellaneous Appeal is partly allowed. The second respondent-Insurance Company is directed to deposit the enhanced award amount of Rs.1,90,133.83/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS III mdu)

//True Copy//

Sub Assistant Registrar

To

The Judge, Principal subordinate Court,
Motor Accidents Claims Tribunal,
Krishnagiri.

Copy to:

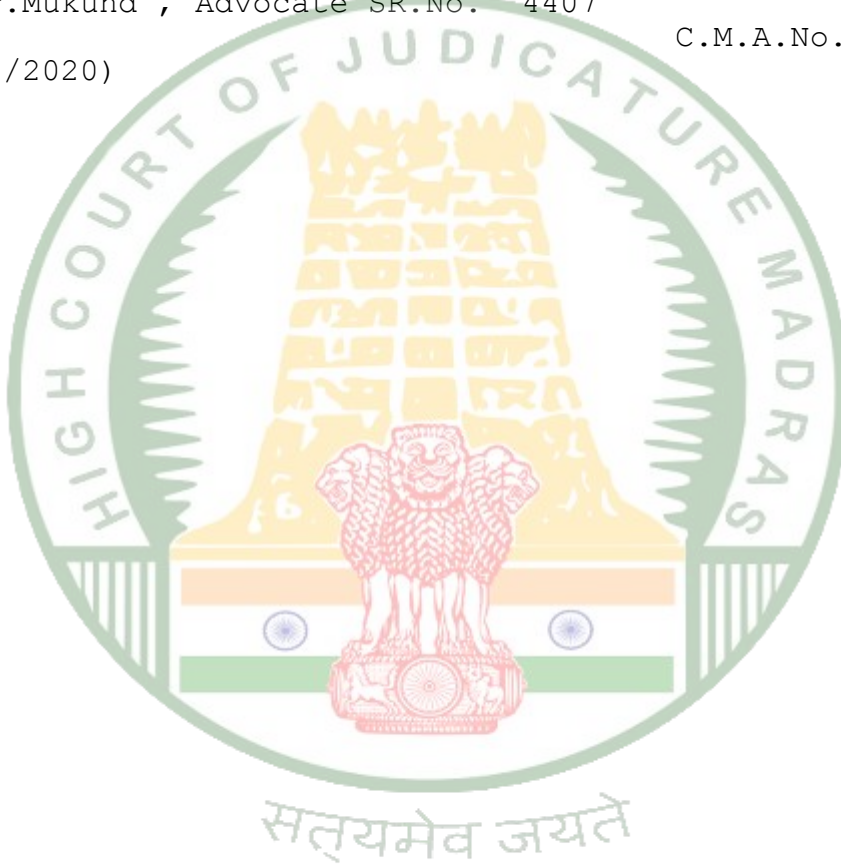
The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.T.Ravi chandran , Advocate SR.No. 4796

+1cc to Mr.Mukund , Advocate SR.No. 4407

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A.SK(26/08/2020)



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