

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2686 of 2019

Loganathan

... Appellant/ Petitioner

Vs.

1. Sivakami

2. National Insurance Co., Ltd.,
2nd Street, 81-D, Chetty Street,
Bus Stand Opposite,
Tiruchengode. ... Respondents/ Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 22.01.2019 made in M.C.O.P.No.76 of 2015 on the file of the Motor Accident Claims Tribunal / Subordinate Judge Court, Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran

For R2 : Mr.J.Chandran

R1 - Exparte

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 22.01.2019 made in M.C.O.P.No.76 of 2015 on the file of the Motor Accident Claims Tribunal / Subordinate Judge Court, Tiruchengode.

2. The case of the appellant is that on 03.09.2014 at about 07.00 p.m., the appellant was travelling as a pillion rider in a Two Wheeler bearing Registration No.TN-28-AL-3070 at the left side of the Tiruchengode to Kokkarayanpettai road, near Mankarattupalayam. At that time, the rider of the said two wheeler in a rash and negligent manner and without following the traffic rules, hit against an unknown Lorry and caused accident. As a result, the appellant sustained grievous injuries and fractures on his left hand below knee and right leg knee. Immediately he was taken to the Thirukumaran hospital, Tiruchengode, and admitted as inpatient for

treatment. In spite of the treatment given, he had become permanently disabled, and therefore, he filed a Claim Petition before the Motor Accident Claims Tribunal / Subordinate Judge Court, Tiruchengode, claiming a sum of Rs.15,00,000/- as compensation under various heads.

3. Denying the mode of accident, the second respondent who is the insurer of the two wheeler has contended that the accident occurred only due to the rash and negligent driving of the rider of the two wheeler and therefore, they are not liable to pay any compensation to the appellant/claimant. Further, the rider who is alleged to have driven the two wheeler did not have driving licence at the time of accident and therefore, the first respondent who allowed the rider to drive the said vehicle alone is liable to pay compensation to the claimant.

4. The Tribunal, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the appellant/claimant and awarded a sum of Rs.93,657/- as compensation under the following heads:

S.No.	Particulars	Amount in Rs.
1.	5% Disability (3000 x 5)	15,000/-
2.	Medical Expenses	43,657/-
3.	Pain and Sufferings	25,000/-
4.	Extra Nourishment	10,000/-
	Total	93,657/-

5. Aggrieved by the award, the appellant/claimant has preferred this appeal before this Court by submitting that before the accident, he was working as a Power Loom Worker and he was earning Rs.10,000/- per month. Due to the accident occurred on 03.09.2014, he had sustained grievous injuries and fractures on his left hand below knee and right leg knee, and he could not do work as before. Further, he had taken treatment as an inpatient from 03.09.2014 to 07.09.2014 (5 days) and during the period of treatment, he underwent surgery, and plates and screws were also fixed on his body. While being so, the Tribunal has awarded very meagre amount under the heads of Pain and Sufferings and Extra Nourishment, and also the Tribunal has not awarded any amount towards Loss of Income and Attender Charges.

6. Heard the learned counsel on either side and perused the materials available on records.

7. On perusal of the award dated 22.01.2019 passed in M.C.O.P.No.76 of 2015 by the Motor Accident Claims Tribunal / Subordinate Judge Court, Tiruchengode, it is observed that the appellant/claimant has clearly stated that the accident occurred only due to the rash and negligent driving of the rider of the two wheeler and further, he has filed the FIR copy which was marked as Ex.P5 before the Tribunal to prove the same. Therefore, the Tribunal has given a finding that the accident occurred only due to the negligence of the rider of the two wheeler. It is further observed that the rider of the two wheeler did not have driving licence at the time of accident, despite the same, the first respondent had given her two wheeler to the rider by violating policy conditions. However, since the second respondent is the insurer of the vehicle, the Tribunal has directed the second respondent to pay compensation to the claimant and also directed to collect the same from the first respondent, which is found to be reasonable.

8. It is also observed from the order of the Tribunal that regarding the injury and disability sustained by the claimant, the Tribunal has considered the documents i.e. Accident Register of Thirukumaran Hospital (Ex.P2) and Disability Certificate (Ex.P7) issued by the doctor who treated the claimant, and after considering the same only, the Tribunal has fixed the disability at 5% and awarded Rs.3,000/- per percentage. Hence, it cannot be modified. Further, it is observed that the respondent insurance company has not raised any objection before the Tribunal for the Medical Bills (Ex.P4) filed before the Tribunal and therefore, the Tribunal has awarded the sum of Rs.43,657/- under the head of Medical Expenses. Hence, it cannot be modified. Moreover, the sum of Rs.25,000/- awarded under the head of Pain and Sufferings and the sum of Rs.10,000/- awarded under the head of Extra Nourishment are reasonably considered by the Tribunal and therefore, they also cannot be modified.

9. In view of the above observations, the Tribunal has carefully considered the case of the appellant and reasonably awarded the compensation under the above heads. Hence, it does not require any interference of this Court.

10. Accordingly, this Civil Miscellaneous Appeal is dismissed by confirming the award dated 22.01.2019 passed in M.C.O.P.No.76 of 2015 on the file of the Motor Accident Claims Tribunal / Subordinate Judge Court, Tiruchengode. The respondent insurance company is directed to deposit the entire award amount as fixed by the Tribunal 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/claimant is permitted to withdraw the amount, less the amount if any, already withdrawn. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

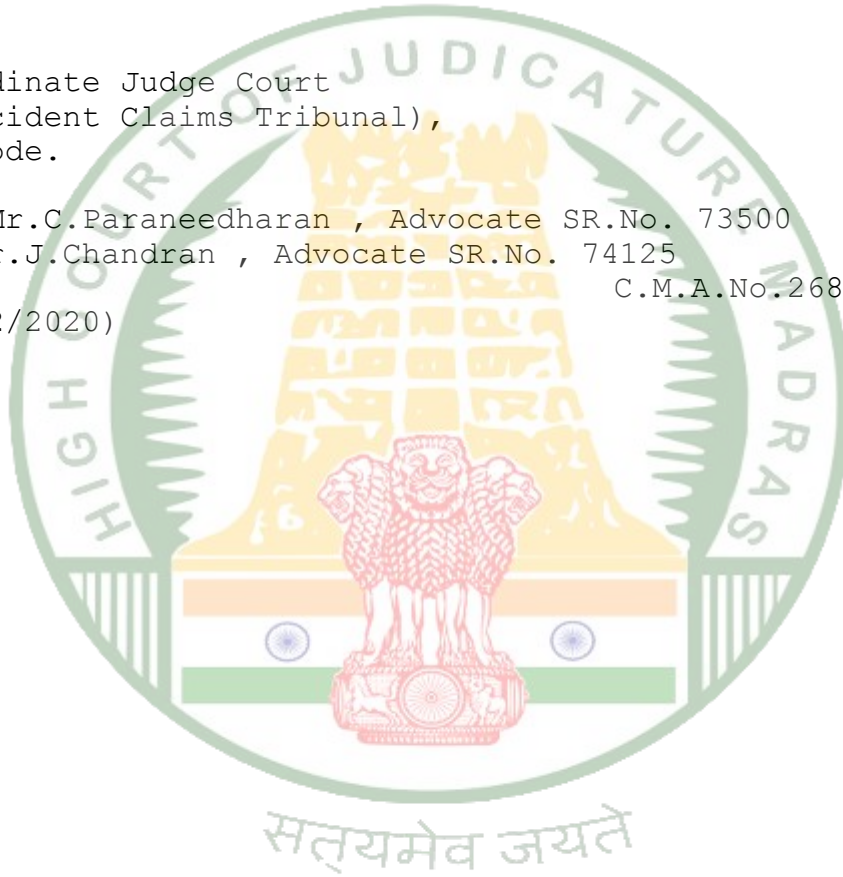
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To

The Subordinate Judge Court
(Motor Accident Claims Tribunal),
Tiruchengode.

+2ccs to Mr.C.Paraneedharan , Advocate SR.No. 73500
+1cc to Mr.J.Chandran , Advocate SR.No. 74125

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A.SK(11/02/2020)



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