

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.2875 of 2019

K.Rambabu

... Appellant/Claimant

Vs.

1. Aswinkumar

2. The Oriental Insurance Co.Ltd.,
Third Party Claims Office,
New No.116, Old No.115,
Prakasam Salai, Broadway,
Chennai - 1.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.09.2018 made in M.C.O.P.No.7210 of 2014, by the II Judge, Court of Small Causes, Chennai - 104 and enhance the award amount in the interest.

For Appellant : Mr.C.Richard Suresh Kumar

R1 : Exparte

For R2 : Mr.M.Krishnamurthy

J U D G M E N T

The Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 19.09.2018 made in M.C.O.P.No.7210 of 2014, by the II Judge, Court of Small Causes, Chennai - 104 and enhance the award amount in the interest.

2.The brief facts is as follows:

On 27.08.2014 at about 19.30 hrs the petitioner was crossing the road at pedestrian corssing opposite to Sipcot UPL Company near bus stop. At that time, the driver of the 1st respondent Motor Cycle bearing Registration No.TN-73-H-0036 drove the said vehicle with excessive speed in a rash and negligenet manner and hit against the petitioner and caused grievous injuries. As a result, he sustained grievous injuries all over his body. Since the accident occurred only due to the rash and negligent

driving of the respondent's driver, the appellant filed a Claim Petition, claiming a sum of Rs.6,00,000/- as compensation. The Tribunal after analysing the evidence and documents and pleadings of both parties, dismissed the claim petition.

3.The appellant is very much aggrieved against the findings of the Tribunal by stating that the dismissal of claim application by the Tribunal holds that he is not entitled that any compensation. The evidence of P.W.2 was not properly examined by the Tribunal when there are injuries sustained by him. Due to the said accident, the treatment was also given in Government Hospital. Further, he took treatment at Puttur. The P.W.2 also examined before the Tribunal assessed the disability of the appellant to the tune of 30% and marked the disability certificate as Ex.P-7 and X-ray as Ex.P.8. The Tribunal without considering these aspects dismissed the said application.

4.Heard Mr.C.Richard Suresh Kumar, learned Counsel appearing for the appellant and Mr.M.Krishnamurthy, learned Counsel appearing for the 2nd respondent.

5.On perusal of records and hearing on both sides, it is clearly prove that the negligence was on the part of the driver of the first respondent. The tribunal has observed that the appellant sustained injuries and he was also admitted in the Government Vellore Hospital. In order to suppress taking treatment with the native doctor, because of the failure in such treatment at for any other reason he has falsely claimed that he took treatment at Government Hospital, Vellore. Therefore, there is no evidence to show that the petitioner took proper treatment for the injuries sustained by him and concluded that the petitioner is not entitled for any compensation.

6.Though the Tribunal has observed that the claimant has not proved the treatment taken by him in Government Hospital, the ex.P7 and P8 and the evidence of the doctor P.W.2, who has given the disability certificate at 30% clearly prove that the claimant has sustained injuries in the said accident. Hence, this Court has taking into considering the age of the claimant/appellant inclined to award same amount. It is stated by the claimant was aged about 40 yrs and was working as Coolie and earning a sum of Rs.800 per day. Hence, considering the period of treatment he would definitely lost her income for certain period, hence a sum of Rs.6000/- under the head loss of income is granted. Similarly, to considering the disability assessed by the P.W.2 at 30% and Ex.P.8, this Court is of the view, it would be proper to fix Rs.2500/- per percentage for 30% disability. Accordingly a sum of Rs.75,000/- is (30%2500) is

awarded under the head disability. Further, this Court grants a sum of Rs.10,000/- each under the heads Transportation, Extra Nourishment, Pain and Suffering, loss of amenities respectively. Thus the Sum awarded by this Court in various heads as follows.

S.No	Description	Amount awarded by this Court (Rs)
1.	Loss of Income	6,000/-
2.	Permanent Disability	75,000/-
4.	Transportation	10,000/-
5.	Extra Nourishment	10,000/-
7.	Pain and Suffering	10,000/-
8.	Amenities	10,000/-
	Total	Rs.1,32,000/-

7.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by this Court at Rs.1,32,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

8.The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw his share from the enhanced award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

jas

To

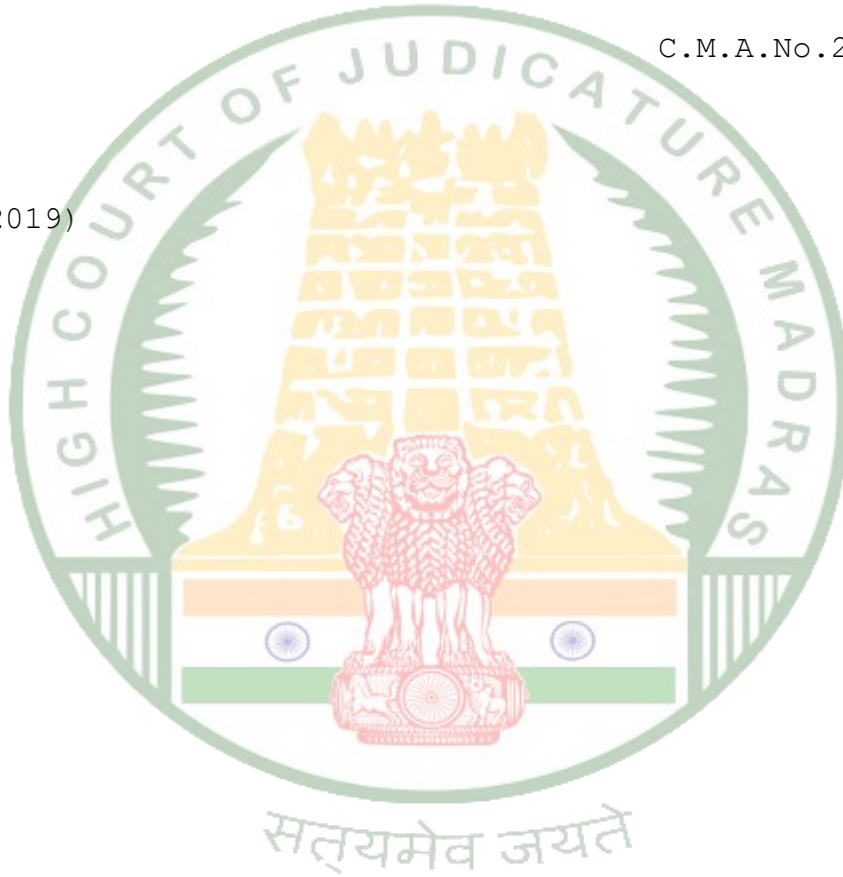
1. The II Judge
Motor Accident Claims Tribunal,
Court of Small Causes,
Chennai - 104.

+1 CC to Mr.C.Richard Suresh Kumar, Advocate sr 71722.

+1 CC to Mr.M.Krishnamurthy, Advocate sr 71549.

C.M.A.No.2875 of 2019

TM(CO)
SP(30/10/2019)



WEB COPY