

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.07.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.217 of 2014

Thangaraj

... Appellant

Vs.

1. Sumathi

2. National Insurance Co. Ltd.,
74 A, Paramathy Road,
Namakkal District.

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, to set aside the order made in M.C.O.P.No.71 of 2012 on the file of the Motor Accident Claims Tribunal, Tiruchengode, dated 23.08.2013 and for enhancement of compensation.

For Appellant : Ms.T.Gayathri

For R2 : Served
No Appearance
R1 - Exparte

Judgment

This Civil Miscellaneous Appeal has been filed against the award dated 23.08.2013 passed in M.C.O.P.No.71 of 2012 by the Motor Accident Claims Tribunal, Tiruchengode.

2. The case of the appellant is that on 02.06.2012 at about 05.30 p.m, the petitioner was going in Tiruchengode to Sankari Main Road near Thirumurugan Auto Mobiles in a TVS XL bearing Registration No.TN-34-K-0572. At that time, the driver of the Eicher Lorry bearing Registration No.TN-28-AD-9940 drove the vehicle in a rash and negligent manner and hit behind the petitioner's vehicle. As a result, the petitioner fell down on the ground and sustained grievous injuries. Immediately, he was taken to S.R.M. Hospital, Tiruchengode, and thereafter to Thirukumaran Hospital, Tiruchengode, and took treatment as inpatient. In spite of the treatment given by spending huge

amount, he has become permanent disabled, and therefore, he filed a Claim Petition in M.C.O.P.No.71 of 2012 before the Motor Accident Claims Tribunal, Tiruchengode, claiming a sum of Rs.5,00,000/- as compensation under various heads.

3. Denying the age, occupation, monthly income of the deceased and the alleged accident, the respondent insurance company filed a counter affidavit before the Tribunal and sought for dismissal of the petition as they are not liable to pay any compensation to the claimant.

4. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimant and awarded a sum of Rs.98,765/- as compensation under various heads. Aggrieved by the award, the appellant/claimant has filed this appeal before this Court.

5. On perusal of the award dated 23.08.2013 passed by the Motor Accident Claims Tribunal, Tiruchengode, it is observed that the second respondent has contended that the appellant had no valid driving licence at the time of accident, and further, three persons were travelled in the two wheeler including the petitioner, and therefore, the accident has caused. However, the second respondent has not produced any documentary evidence to prove the same, and further, one of the persons travelled in the two wheeler was a minor and was aged only 11 years, and therefore, the Tribunal has come to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of the Eicher Lorry i.e. the first respondent's driver and fixed the liability on the first respondent as well as the second respondent who is the insurer of the vehicle.

6. It is also observed from the order of the Tribunal that though it was stated by the appellant/claimant that he was aged 37 years and he was earning a sum of Rs.10,000/- at the time of accident, he has not produced any document to prove the same. Therefore, the Tribunal has taken the age which was referred in the wound certificate marked as Ex.P5 and fixed the monthly income of the claimant as 3,000/- per month. However, while calculating the amount towards partial loss of earning, the Tribunal has wrongly calculated the monthly income of the claimant as 4,000 instead of 3,000 and awarded a sum of Rs.8,000/- towards partial loss of earning. Hence, it is hereby reduced to Rs.6,000/- i.e. 3000×2 (No. of months taken treatment).

7. It is further observed from the order of the Tribunal that based on the deposition of the Doctor who had given treatment to the claimant, the Tribunal has come to conclusion that the claimant would have taken treatment and bed rest at

least for a period of two months. While considering the same, the sum of Rs.49,765/- awarded towards Medical Expenses is found to be reasonable. However, the sum of Rs.2,000/- awarded towards Transport, the sum of Rs.3,000 awarded towards Extra Nourishment, and the sum of Rs.5,000 awarded towards pain and sufferings, are found to be meager, and therefore, they are hereby enhanced to Rs.15,000 for Transport and Rs.10,000/- for Extra

Nourishment and Pain and Sufferings. The sum of Rs.1,000/- awarded towards Damages to clothing and articles is also found to be meager, and therefore, it is also hereby enhanced to Rs.2,000/-.

8. It is further observed from the order of the Tribunal that though it was deposed by the doctor that the claimant had 28% permanent disability, during cross examination, he has admitted that the claimant has only a partial permanent disability, and therefore, the Tribunal has reduced the percentage of the disability as 15 and awarded a sum of Rs.30,000/- i.e. Rs.2,000/- per percentage towards loss of earning power, which is found to be reasonable.

9. It is also observed that the Tribunal has not awarded any amount towards Attender's charge and Future Medical Expenses. Since the claimant had taken treatment and bed rest for a period of two months, somebody would have helped him in his day to day activities and therefore, a sum of Rs.2,000/- is awarded towards Attender's charge. Besides, considering the fracture and the partial disability sustained by the claimant, a further sum of Rs.20,000/- is awarded towards Future Medical Expenses.

10. With these observations, the compensation awarded by the Tribunal is modified in the following manner:

S.No .	Description	Amount awarded by the Tribunal (Rs .)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1 .	Partial Loss of earnings	8,000	6,000	Reduced
2 .	Transport to Hospital	2,000	15,000	Enhanced
3 .	Extra Nourishment	3,000	10,000	Enhanced

4	Damages to clothing & articles	1,00	2,00	Enhanced
5	Medical Expenses	49,765	49,76	Confirmed
6	Pain and Sufferings	5,00	10,00	Enhanced
7	Loss of earning power	30,000	30,00	Confirmed
8	Attender's Charge	-	2,00	Granted
9	Future Medical Expenses	-	20,00	Granted
	Total	98,765	1,44,76	Enhanced by 46,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation Rs.98,765/- awarded by the Tribunal by order dated 23.08.2013 in M.C.O.P.No.71 of 2012 is hereby enhanced to Rs.1,44,765/-. Since the Appellant has paid Court fee only for Rs.98,765/- in this appeal, this Court directs the Appellant to pay the Court fee for the balance amount of Rs.46,000/- (Rs.1,44,765 - 98,765/-), which the Registry shall collect before drafting the decree.

12. The second respondent insurance company is directed to deposit the enhanced award amount with interest at the rate of 6% per annum from the date of petition till the date of realization, 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 being made, the appellant/claimant is permitted to withdraw the amount, less the amount if any, already withdrawn, by filing an appropriate application before the Court concerned. No costs.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The learned Judge,
Motor Accident Claims Tribunal,
Tiruchengode.

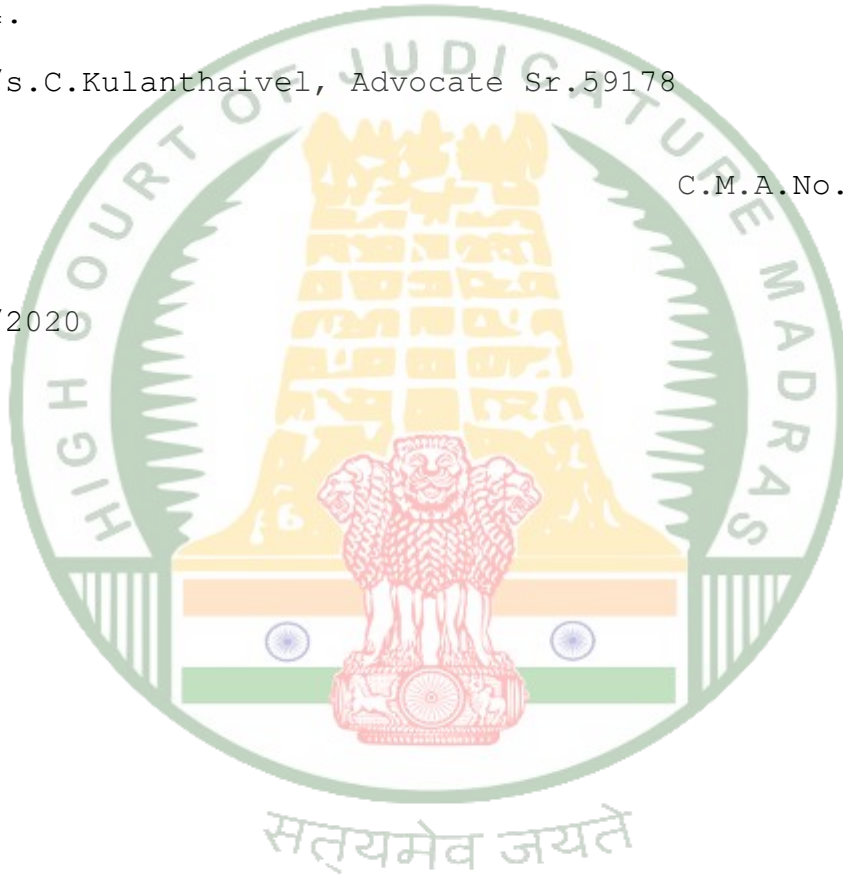
Copy to

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to M/s.C.Kulanthaivel, Advocate Sr.59178

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vsn II[co]
srg 24/08/2020



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