

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.228 of 2014

Balasundaram

... Appellant/Petitioner

Vs.

1. M.Chinnasamy

2. United India Insurance Co. Limited,
Motor Third Party Cell,
No.38, Mount Road,
Chennai - 600002 ... Respondents/Respondents
(R1 remained exparte before the Tribunal)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 11.07.2011 made in M.A.C.T.O.P.No.756 of 2006 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Tiruvanamalai.

For Appellant : Mr.F.Terry Chellaraja
For R2 : Mrs.Rathanathara

R1 - Exparte before the Tribunal

Judgment

This Civil Miscellaneous Appeal has been filed against the award dated 11.07.2011 passed in M.A.C.T.O.P.No.756 of 2006 by the Motor Accident Claims Tribunal (Principal Subordinate Judge), Tiruvanamalai.

2. The case of the appellant is that on 11.12.2003 at about 8.30 p.m., while he was riding as pillion rider on his son's motorcycle bearing Registration No.TN-10-F-3709 on the left side of the Matharpakkam to Kanchipuram Road, the first respondent's motorcycle bearing Registration No.TN-22-V-2923 driven by his driver came in a rash and negligent manner, hit against the appellant's son's motorcycle and caused the accident. Due to the impact, the appellant sustained multiple injuries all over his body and fracture on his right leg. The accident occurred only due

to the negligent driving of the first respondent's driver, and therefore, the appellant has filed a Claim Petition before the Motor Accident Claims Tribunal (Principal Sub Judge), Tiruvanamalai, claiming a sum of Rs.5,00,000/- as compensation under various heads.

3. Denying the mode of accident, the second respondent who is the insurer of the first respondent's motorcycle has contended that the driver of the first respondent had no valid licence at the time of accident to drive the motorcycle, and also the claimant has not produced any proof to prove the nature of injuries, occupation and the alleged accident, and therefore, he is not entitled to claim any compensation from the Insurance Company.

4. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimant and awarded a sum of Rs.1,65,421/- as compensation under various heads. Aggrieved by the award, the appellant/claimant has preferred this appeal before this Court.

5. On perusal of the award dated 11.07.2011 passed in M.A.C.T.O.P.No.756 of 2006 by the Motor Accident Claims Tribunal (Principal Sub Judge), Tiruvanamalai, it is observed that though it was stated by the second respondent that the first respondent's driver had no valid licence at the time of accident, neither any document was produced nor any witness was examined on the side of the second respondent. Therefore, the Tribunal has come to the conclusion that the accident occurred only due to the negligent driving of the first respondent's driver. The second respondent has also not denied that the first respondent's motorcycle was insured with them at the time of accident. Therefore, the Tribunal has fixed the liability on the second respondent. It is also observed that the Tribunal only after considering the disability certificate issued by the doctors who examined the appellant has fixed the disability at 40% and awarded a sum of Rs.80,000/- i.e. Rs.2,000/- per percentage, for disability and Rs.25,000/- for paid and sufferings. Therefore, they cannot be modified. The sum of Rs.5,000/- awarded towards transport expenses is very meager and it is hereby enhanced at Rs.20,000/- as the appellant has taken treatment in various hospitals and has spent more for transportation. The sum of Rs.5,000/- awarded towards extra nourishment is very meager. Considering the nature of injuries and fracture sustained by the appellant, it is hereby enhanced at Rs.10,000/-. The sum of Rs.50,421/- awarded towards medical expenses is very much reasonable

and therefore, it is hereby confirmed. Considering the mode of accident caused to the appellant, a sum of Rs.2,000/- is awarded towards Damages to clothes. Besides, a sum of Rs.5,000/- is awarded towards Attender's charge as the attender had helped the appellant in his day to day activities. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1	Permanent Disability	80,000	80,000	Confirmed
2	Transport Expenses	5,000	20,000	Enhanced
3	Extra Nourishment	5,000	10,000	Enhanced
4	Medical Expenses	50,421	50,421	Confirmed
5	Pain and Sufferings	25,000	25,000	Confirmed
6	Damages to clothes	-	2,000	Granted
7	Attender's Charge	-	5,000	Granted
	Total	1,65,421	1,92,421	Enhanced by 27,000/-

6. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation Rs.1,65,421/- awarded by the Tribunal by order dated 11.07.2011 in M.A.C.T.O.P.No.756 of 2006 is hereby enhanced to Rs.1,92,421/-. Since the Appellant has paid Court fee only for Rs.2,00,000/- in this appeal, this Court directs the Appellant to pay the Court fee for the balance amount of Rs.27,000/- (1,92,421 - 1,65,421), if necessary.

7. 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

raja
To

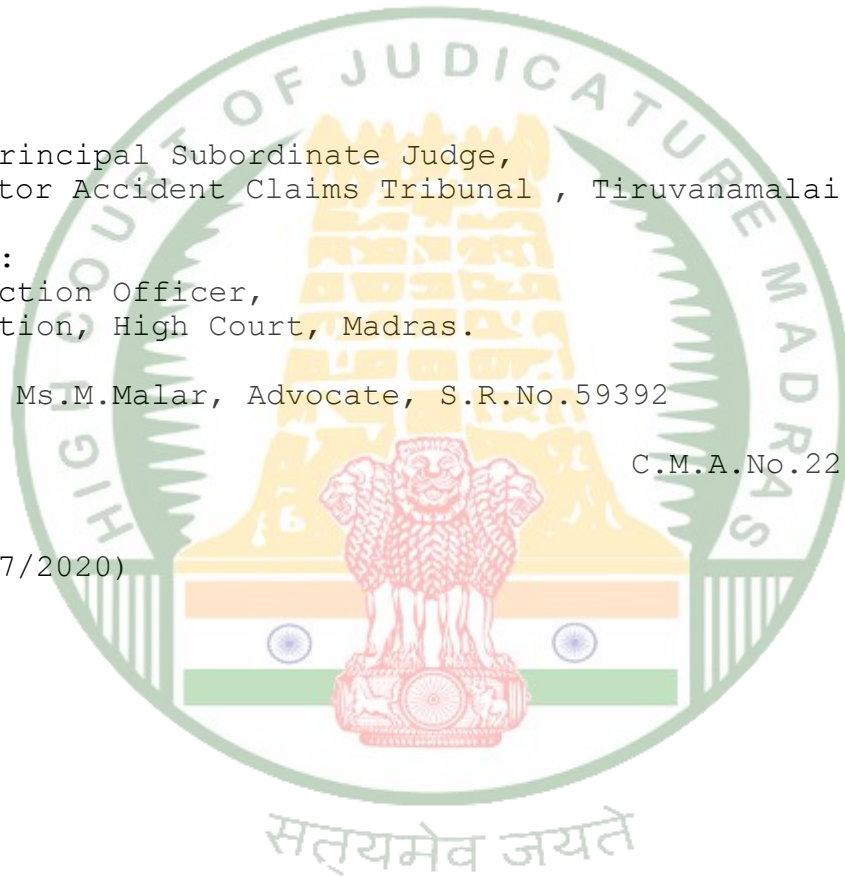
1.The Principal Subordinate Judge,
Motor Accident Claims Tribunal , Tiruvanamalai.

Copy to:
The Section Officer,
VR Section, High Court, Madras.

+1cc to Ms.M.Malar, Advocate, S.R.No.59392

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NRL(CO)
CB(28/07/2020)



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