

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3625 of 2004

Aravindakshan Nair

.. Appellant/Claimant

Vs.

1. Hariharan

(R1 set exparte before the Tribunal)

2. The United India Insurance Co., Ltd.,
38, Anna Salai, Chennai - 2.

.. Respondents/ Defendants

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.08.2004 made in M.C.O.P.No.2192 of 1999, on the file of the Motor Accidents Claims Tribunal, (IV Judge, Small Causes Court) at Chennai.

For Appellant : Mr.A.N.Viswanatha Rao
For R2 : Mr.D.Bhaskaran

J U D G M E N T

This appeal has been filed against the judgment and decree dated 10.08.2004 passed by the Motor Accidents Claims Tribunal, (IV Judge, Small Causes Court) at Chennai, in M.C.O.P.No.2192 of 1999.

2. It is the case of the appellant/claimant that on 23.11.1998 about 10.45 hours, while he was crossing Harris Road from South to North direction, a motorcycle bearing registration No.TN05 A 1524 belonging to the first respondent and insured with the second respondent insurance company, came in a rash and negligent manner and hit the said pedestrian. As a result of the same, the appellant sustained grievous injuries. Stating so, he filed a claim petition, claiming compensation of Rs.1,75,000/-. The Tribunal, after considering the oral and documentary evidence, awarded a total compensation of Rs.85,500/- with interest at 9% per annum from the date of petition. Feeling aggrieved and being dissatisfied with the quantum so awarded, the appellant has preferred this appeal seeking enhancement of the same.

3. The learned counsel for the appellant/claimant submitted that the Tribunal has awarded a lesser sum of Rs.55,000/- towards 65% permanent disability; the compensation awarded under other heads are also very meagre; and hence, the same needs substantial enhancement.

4. Per contra, the learned counsel for the second respondent/insurance company submitted that after properly analysing the materials and evidence, the Tribunal has awarded the compensation, which is just and reasonable and hence, the same does not require any interference in the hands of this Court.

5. Heard the learned counsel on either side and perused the materials available on record.

6. This appeal is preferred by the claimant seeking enhancement of the compensation awarded by the Tribunal. Hence, there is no requirement for this Court to go into the findings of the Tribunal on negligence and liability fastened on the second respondent insurance company.

7. According to the learned counsel for the appellant, the quantum of compensation awarded by the Tribunal is inadequate, considering the nature of the injuries and the gravity of permanent disablement sustained by the appellant. To appreciate the said contention, it is necessary for this Court to examine the evidence and materials adduced by the appellant before the Tribunal.

8. The appellant/claimant himself examined as P.W.1, who deposed in his evidence that in the accident, he sustained fracture of left radius, left Post frontal contusion and multiple injuries in all over body; he was 51 years old and was earning Rs.3,000/- per month by working as a Supervisor in a Hotel; and he initially took treatment at Government Hospital as inpatient for a period of nine days. The doctor/P.W.3, who examined the appellant/claimant, has narrated in detail about the nature of the disability and its impact and deposed that the appellant/claimant sustained 65% permanent disability; Ex.P2 is the wound certificate; Exs.P6 and P8 are the disability certificates; and Exs.P7 and P9 are X-rays. However, the Tribunal has awarded only a sum of Rs.55,000/- towards 65% permanent disability, which, in the opinion of this Court, is slightly on the lower side and hence, the same is hereby enhanced to Rs.65,000/-.

9. Further, taking note of the evidence of the appellant/claimant that due to the permanent disability, he could not do his avocation as before; his right hand movement

was restricted by 20 degree; and he has been taking treatment continuously, this Court feels it just and appropriate to enhance the compensation awarded under the heads 'Transport charges', 'extra nourishment', 'medical expenses', 'loss of earning capacity' and 'pain and suffering' to some extent. That apart, this Court is inclined to award reasonable sum towards attendant charges. However, there is no modification with regard to the compensation awarded by the Tribunal under the head 'loss of income during treatment period' and also the rate of interest at 9%per annum. Accordingly, the compensation awarded by the Tribunal is modified in the following terms:

Head	Compensation awarded by the Tribunal (Rs.)	Compensation enhanced by this Court (Rs.)
Permanent disability at 65%	55,000/-	65,000/-
Loss of income during treatment period	7,500/-	7,500/-
Extra nourishment	1500/-	5,000/-
Transport charges	500/-	2,000/-
Medical expenses	1,000/-	5,000/-
Pain and Suffering	10,000/-	20,000/-
Loss of earning capacity	10,000/-	20,000/-
Attendant charges	---	1,000/-
Total	85,500/-	1,25,500/-

10. In view of the above, the award of the Tribunal is enhanced from Rs.85,500/- to Rs.1,25,500/-. However, it is made clear that the enhanced sum of Rs.40,000/- shall carry interest at 9% per annum only from the date of filing of this appeal.

11. In the result, this appeal is partly allowed. No costs. The second respondent Insurance Company is directed to deposit the entire compensation amount, as awarded by this Court, with interest and costs, after deducting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the same to the savings bank account of the appellant/claimant, through RTGS within a period of one week thereafter.

Sd/-
Assistant Registrar(CS)

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Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
The IV Small Causes Court,
Chennai

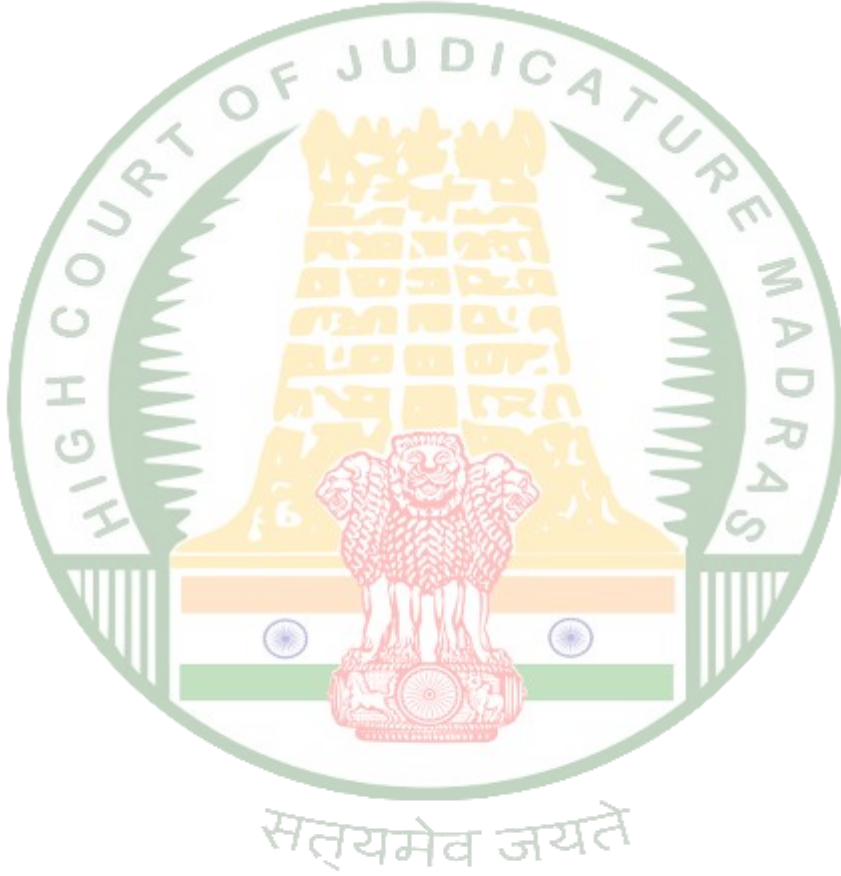
Copy to:

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

C.M.A.No.3625 of 2004

+1cc to Mr.D.Bhasakaran , Advocate SR.No. 49308

A.SK(11/11/2020)



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