

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3033 of 2017

S.Arokiya Aruldoss

.. Appellant / Petitioner

Vs.

1. Srujan Salvino Chowdary,

2. Oriental Insurance Co. Ltd,
No.115, Broadway,
Chennai-600 108.

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.08.2017 made in M.C.O.P.No.2691 of 2015 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mr.M.Krishnamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 28.08.2017 made in M.C.O.P.No.2691 of 2015 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2.The appellant is claimant in M.C.O.P.No.2691 of 2015 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai. The appellant filed the above said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 14.10.2014.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the 1st respondent's motorcycle to pay a sum of Rs.28,000/- as compensation to the

appellant/claimant being 50% of the compensation and fixed 50% of negligence on the part of appellant. Challenging the portion of the award, fixing 50% of the contributory negligence on the part of the appellant and not being satisfied with the award amount granted by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

4.The learned counsel appearing for the appellant contended that the Tribunal having held that the accident occurred only due to rash and negligent driving by the two wheeler belonging to the 1st respondent, erred in fixing 50% of contributory negligence on the part of the appellant. The reason given by the Tribunal for fixing contributory negligence is erroneous. The Tribunal ought to have fixed entire negligence on the part of the rider of the motorcycle belonging to the 1st respondent. The P.W.2/Doctor assessed the disability sustained by the appellant as 25%. The Tribunal erroneously reduced the percentage of disability to 7%, awarded meagre amount of compensation and prayed for enhancement of compensation.

5.Per Contra, Mr.M.Krishnamoorthy, the learned counsel appearing for the 2nd respondent/Insurance Company contended that P.W.2 is a stock witness and the percentage of disability assessed by the Doctor is excessive. The Tribunal considering the medical manual, held that the percentage of disability for the injury suffered by the appellant is only 7% and the same is valid. The Tribunal has awarded excessive amount under different heads. The appellant did not possess driving license at the time of accident. The Tribunal rightly fixed 50% of contributory negligence and prayed for dismissal of the appeal.

6.I have heard the learned counsel appearing for the appellant as well as the second respondent-Insurance Company and perused all the materials available on record.

7.From the materials available on record, it is seen that the accident occurred only due to rash and negligent riding by the 1st respondent. After having held so, the Tribunal erroneously fixed 50% contributory negligence on the part of the appellant on the ground that the appellant did not possess driving license. The reason given by the Tribunal is erroneous and 50% contributory negligence fixed on the part of the appellant is set aside. The P.W.2-Doctor has assessed the disability suffered by the appellant as 25%. The Tribunal considering the medical manual issued by the American Academy of Orthopedic surgeons held that the percentage of disability is only 7% and awarded Rs.3,000/- per percentage of disability. The reason given by the Tribunal for reducing the percentage of disability is erroneous. The appellant is entitled to compensation for 25% disability. The amount awarded by the

Tribunal towards disability is modified to Rs.75,000/- (3,000 x 25%). The appellant was taking treatment in hospital as inpatient from 14.10.2014 to 21.10.2014. The amounts awarded by the Tribunal towards attendant charges is meager. The Tribunal awarded a sum of Rs.2,000/- towards attendant charges and the same is enhanced to Rs.5,000/-. The Tribunal has not awarded any amount towards loss of amenities and damages to cloth. A sum of Rs.10,000/- and Rs.1,000/- is granted towards loss of amenities and damages to cloth respectively. The amounts awarded by the Tribunal under other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Attendance Charges	2,000	5,000	Enhanced
2.	Disability	21,000	75,000	Enhanced
3.	Loss of Income	12,000	12,000	Confirmed
4.	Pain and sufferings	10,000	10,000	Confirmed
5.	Transport to Hospital	5,000	5,000	Confirmed
6.	Extra Nourishment	5,000	5,000	Confirmed
7.	Loss of Amenities	-	10,000	Granted
8.	Damages to cloth	-	1,000	Granted
	Total	Rs.55,000/-	Rs.1,23,000/-	Enhanced by Rs.95,000/-
	50% of the award amount	Rs.27,500/- rounded off to Rs.28,000/-		

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.28,000/- is hereby enhanced to Rs.1,23,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent/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 the enhanced award amount along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

gbi/rst

To

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

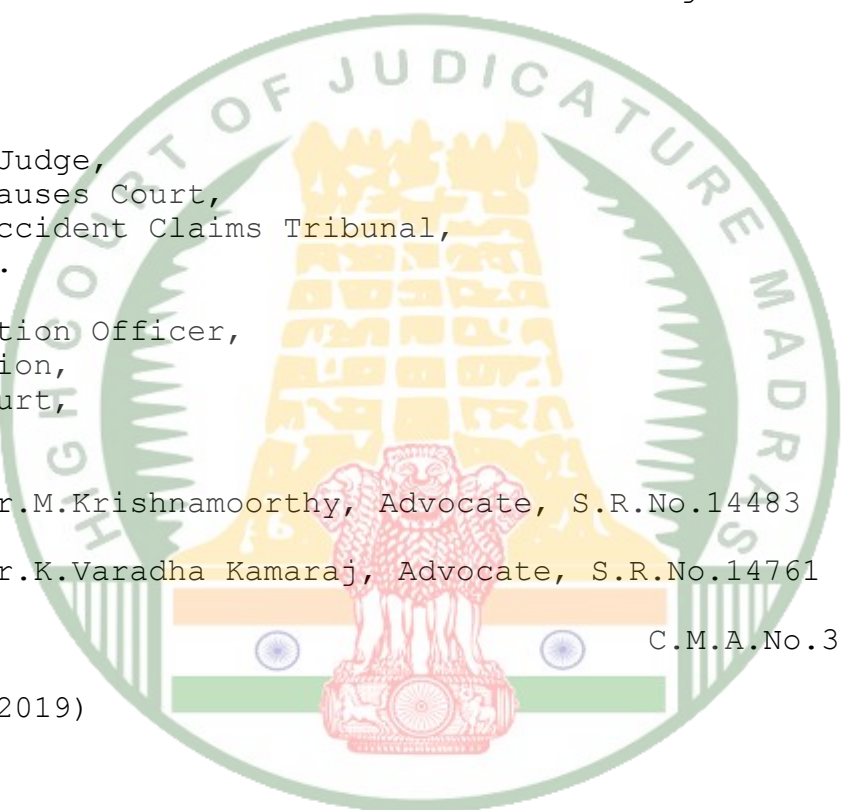
2. The Section Officer,
VR Section,
High Court,
Madras.

+1 cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.14483

+1 cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.14761

C.M.A.No.3033 of 2017

AK(CO)
SSM(23/05/2019)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. The gopuram is flanked by two green trees. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a green arc around the top. At the bottom, the motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script. Below the seal, the words "WEB COPY" are written in large, grey, sans-serif capital letters.

सत्यमेव जयते

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