

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1350 of 2013

Pachiappan

.. Appellant/Petitioner

Vs.

1. N. Jeganathan

2. The ICICI Lombard General
Insurance Co. Ltd., Salem

...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment & Decree dated 20.03.2009, made in M.A.C.T.O.P.No.62 of 2007, on the file of the Hon'ble Sub Judge cum Motor Accidents Claims Tribunal, Mettur.

For Appellant : Mr.S.Vijaya Raghavan

For Respondent-1 : Served, name printed (No Appearance)

For Respondent-2 : Mr.E.Rajadurai

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant to enhance the compensation awarded in M.A.C.T.O.P.No.62 of 2007, dated 20.03.2009 on the file of the Sub Judge cum Motor Accidents Claims Tribunal, Mettur.

2.The appellant is the claimant. The first and second respondents are the owner and insurer of the alleged vehicle involved in the accident.

3.The case of the appellant/claimant is that on 25.02.2007 at about 8:30 hours, when he was walking from Vellalur to Autokaranur Road, a Tractor bearing Registration No.TN.30.N.2988 came behind the appellant without any sounding horn and knocked him. The accident occurred due to the negligent driving of the driver of the Tractor. Due to the impact the appellant fell down and sustained grievous injuries. Hence he filed a claim petition before the Tribunal, claiming a sum of Rs.9,00,000/- as compensation.

4.The Tribunal considering the pleadings, oral and

documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the Tractor belonging to the first respondent and insured with the second respondent and allowed the case in part and directed the second respondent/Insurance Company to pay a sum of Rs.74,050/- with 7.5% interest as compensation.

5. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6. The learned counsel appearing for the appellant would contend that due to the accident the appellant sustained painful swelling over Right Clavicle and he was not able to lift his right shoulder and he also sustained lacerated injury in the fore head and abrasion on the left side of the forehead and on the side of the chest. He was working as a contract labour in SISCOL Company pottaneri and he was also doing agriculture. Due to the said accident he was not able to continue his job. But the Tribunal has not considered the same while arriving compensation and awarded very low amount as compensation.

7. Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the driver of the Tractor drove the said vehicle without valid driving licence at the time of accident, which constitutes deliberate, wilful violation of policy condition. Hence, this respondent is not liable to indemnify the owner of the Tractor. However, the Tribunal has awarded a reasonable amount as compensation.

8. Despite serving notice and name printed in the cause list, there is no representation for the first respondent. Hence, the main appeal itself is taken up for final disposal, since the disposal of the case will not affect the first respondent in any manner.

9. Heard both sides and also perused all the materials available on record.

10. On a perusal of the record, with regard to the negligence aspect the learned Judge before the Tribunal has raised in point no.1, i.e. On whose negligence the accident has taken place?. The said aspect was discussed elaborately. The appellant was examined as P.W.1 and he deposed that the negligence on the part of the driver of the Tractor is the cause for the accident. Ex.P.1/F.I.R and Ex.P.5/Certified copy of the charge sheet supports the case of the claimant rather than the appellant. The owner of the vehicle/first respondent was examined as R.W.1 and he deposed that even though a case was registered against him, he was acquitted from the charges

levelled against him. Therefore, he is not liable to pay any compensation to the Victim. After analysing the statement the Tribunal observed that the first respondent was discharged but, the fact remains that in the Order it has been stated that the Public Prosecutor has failed to establish the case beyond reasonable doubt and it has not been stated that the first respondent is not found guilty against the charges levelled against him and hence he was discharged. Therefore, the Tribunal arrived at a conclusion that the negligence exists on the side of the driver of the Tractor and as the insurer of the alleged vehicle involved in accident the second respondent/Insurance Company is liable to pay compensation, which is in accordance with law and there is no infirmity and the same is confirmed as such. There was no valid rebuttal evidence on the side of the respondents before the Tribunal to challenge their negligence aspect.

11. With regard to quantum, the Tribunal considering Ex.P.8/Medical bills has awarded Rs.35,250/- towards the head medical bills. Taking note of Ex.P.11/Disability Certificate the Tribunal has taken 20% as disability and determined Rs.1,000/- per percentage and awarded Rs.20,000/- as compensation towards disability. P.W.3/Dr.R.Krishna Swamy reported that the appellant for removing the plates which was fixed during surgery he will incur Rs.10,000/-. Hence, the Tribunal has awarded Rs.10,000/- towards future medical expenses. Apart from this, the Tribunal has awarded Rs.1,800/-, Rs.2,000/- and Rs.5,000/- towards Transportation charges, Extra nourishment and Mental agony. Thus, the total compensation was quantified at Rs.74,050/-.

12. In view of the above, this Court on re-appreciating the evidence observed that the Tribunal erred in calculating the head Disability by taking only 20% whereas the Doctor had certified 40% as disability. With regard to the amounts awarded under other heads also

needs to be enhanced, when compared to the nature of injuries sustained by the appellant. Further more the Tribunal has not awarded any amount towards the head pain and suffering and attendant charges, even though, Ex.P.3/Accident register reveals that the claimant was admitted as in-patient and he was under treatment from 25.02.2007 to 09.03.2007.

13. Hence, this Court is inclined to consider the percentage of disability as 40% and awarding Rs.1,000/- per percentage and arrived Rs.40,000/- under the head disability. Due to the accident he was not able to go for job for atleast two months, whereas his monthly income was arrived at Rs.5,000/- Hence, Rs.10,000/- (Rs.5,000 x 2) is awarded towards the head loss of income. Considering the nature of injuries sustained by the

appellant this Court is of the view to award Rs.10,000/- towards pain and sufferings and also taking note of Ex.P.3/Accident Register Rs.2,000/- is awarded towards Attendant charges. The amount awarded under the head Transportation charges is rounded off to Rs.2,000/- from Rs.1,800/- . The amount awarded under the head Medical Bills, Future Medical Expenses, Extra Nourishment and Mental Agony remains unchanged. Thus, the amount awarded by this Court is tabulated hereunder:

Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
Medical Bills	Rs.35,250/-	Rs.35,250/-
Disability	Rs.20,000/-	Rs.40,000/-
Future Medical Expenses	Rs.10,000/-	Rs.10,000/-
Transportation Charges	Rs.1,800/-	Rs.2,000/-
Extra Nourishment	Rs.2,000/-	Rs.2,000/-
Mental Agony	Rs.5,000/-	Rs.5,000/-
Loss of income	- Nil-	Rs.10,000/-
Pain and sufferings	-Nil-	Rs.10,000/-
Attendant Charges	-Nil-	Rs.2,000/-
Total	Rs.74,050/-	Rs.1,16,250/-

14.The Compensation amount of Rs.74,050/- is enhanced to Rs.1,16,250/-

15.In the result this appeal is partly allowed and the second respondent/Insurance Company is directed to deposit the amount awarded by this Court at the rate of 7.5% per annum from the date of petition till the date of realization, after deducting the amount if any

already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the same, after deducting the amount already withdrawn, if any, on making proper application before the Tribunal. No Costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Sub Judge cum Motor Accidents Claims Tribunal,
Mettur.

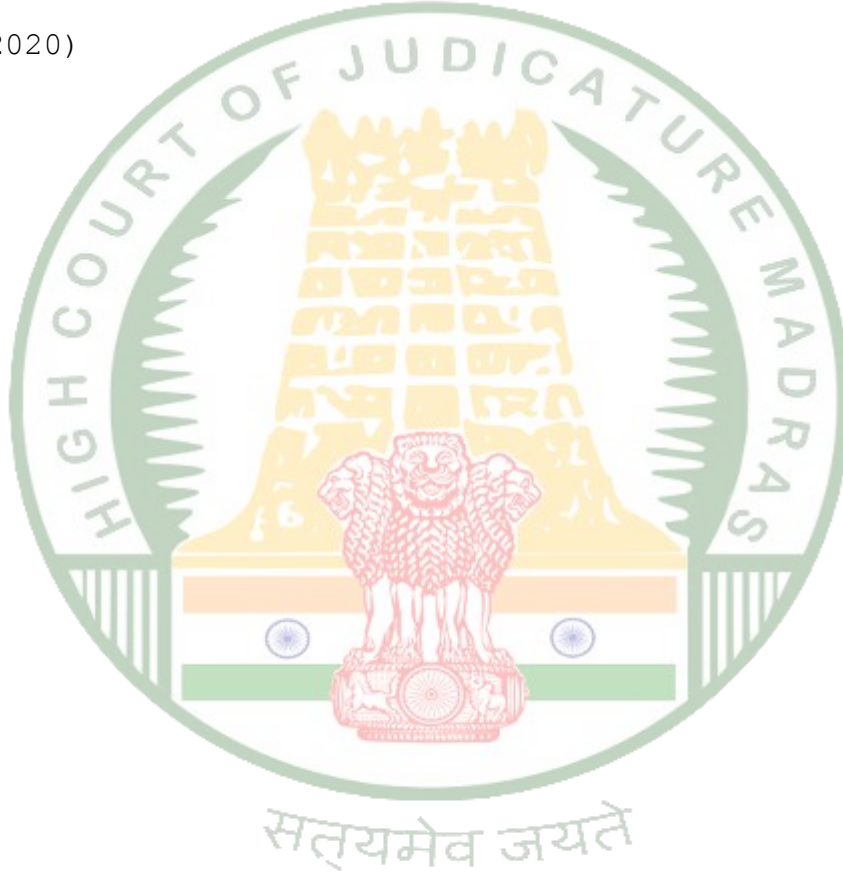
2. The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.T.S.Vijaya Raghavan, Advocate, S.R.No. 17835

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No. 18313

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