

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2020

CORAM

THE HON'BLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1026 of 2012

K.Yuvaraj
S/o.R.Kothandaraman

... Appellant/Petitioner

- Vs -

The Deputy Controller of Stores,
Shell Division,
Integral Coach Factory,
Chennai-38.

... Respondent/Respondent

(Respondent ex parte in Lower Court,
hence Notice may be dispense with)

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the order dated 25.11.2011 made in M.C.O.P.No.4273 of 2005 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge, III Fast Track Court), Chennai.

For Appellant : Mr.V.Mohan Choudary

For Respondent : Ms.Malini
for Mr.C.V.Ramachandra Murthy

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant, aggrieved by the order dated 25.11.2011 made in MCOP.No.4273 of 2005 by the Motor Accident Claims Tribunal, III Fast Track Court, Chennai by raising the following grounds:-

1. The Tribunal failed to consider the nature of injuries sustained by the claimant, the period of treatment and the nature of employment and awarded a sum of Rs.7,500/- only towards loss of income as against the claim of Rs.36,000/-.
2. The Tribunal ought to have awarded a sum of Rs.70,000/- towards disability instead of awarding Rs.45,000/-.
3. The Tribunal ought to have awarded some amount towards future medical expenses.
4. The Tribunal awarded meagre amount towards Transportation, Nutrition and pain and sufferings.

2. The case of the appellant is that on 18.08.2005 at about 14.00 hours, when the appellant/claimant was riding a two wheeler bearing registration No.TN-04-M-7191 slowly and cautiously in G.S.T Road from North to South, a lorry bearing registration No.TN-05-B-4144 came rashly and negligently in the said road and knocked down the said motorcycle, which resulted in the accident. Due to the said accident, the claimant sustained grievous injuries. The claimant had suffered head injuries, right hand both bones fractured, lacerations and abrasions all over the body and hence, he filed a claim petition seeking an amount of Rs.2,00,000/- as compensation. He was originally admitted in Deepam Hospital and got first aid there and referred to Railway Hospital, Perambur and thereafter, he was taken to Voluntary Health Service Hospital on 19.08.2005 for further treatment and he was discharged on 20.08.2005.

3. A counter statement was filed by the respondent denying all the averments and stated that the accident was not occurred due to rash and negligent driving of the driver of the Lorry. The claimant is not entitled for any compensation as claimed by him since the injury sustained by him is not grievous in nature and also there was no loss of earning capacity. Therefore, the respondent prayed for dismissal of the claim petition.

4. On the side of the claimant, two witnesses have been examined and Exs.P1 to P11 were marked. On the side of the respondent neither any witness has been examined nor any exhibits were marked. The Court below, after considering the oral and documentary evidence, has awarded a sum of Rs.87,958/- as compensation with 7.5% interest, by judgment dated 25.11.2011. Aggrieved by the said judgment, the claimant preferred the present appeal seeking enhancement of compensation.

5. The learned counsel for the appellant submitted that the appellant/claimant was a Ghee seller and was earning a sum of Rs.150/- per day. After the accident, he was not in a position to do any work. He would submit that the Court below erroneously awarded a sum of Rs.87,958/- when the claim was for Rs.2,00,000/-.

6. The learned counsel for the respondent would submit that the accident was not occurred due to rash and negligent driving of the driver, who drove the lorry bearing No.TN-05-B-4144, but due to the rash driving of the appellant. She would further submit that the injury sustained by the appellant/claimant is not grievous in nature and after treatment, he became normal and there is no loss of earning capacity.

7. Heard both sides and perused the available materials on record.

8. On going through the materials available on record, the Court below, after considering the various aspects, has come to the conclusion that only due to the rash and negligent act of the driver of the respondent, the accident had occurred and fastening the liability on the respondent. On going through the entire materials, this Court is inclined to modify the heads of loss of income, pain and sufferings, transportation and nutrition. This Court is also inclined to award a sum of Rs.10,000/- towards loss of amenities and a sum of Rs.2,000/- towards attendant benefits. Regarding the disablement and Medical expenses, the Court below has rightly awarded a sum of Rs.45,000/- for disability factor and Rs.20,458/- towards Medical expenses, which are reasonable. The final amount of compensation now determined is tabulated below:-

Heads	Amount (Rs.)
For 30% disablement	45,000
Pain and sufferings	10,000
Nutrition	5,000
Attender Charges	2,000
Loss of income [3000X4]	12,000
Transportation	5,000
Medical expenses	20,458
Loss of amenities	10,000
Total	1,09,458

The same is rounded to Rs.1,09,460/-.

9. This Civil Miscellaneous Appeal is partly allowed. The respondent is directed to deposit Rs.1,09,460/- [Rupees One Lakh Nine Thousand four hundred and Sixty only], less if any amount already deposited, with interest at 7.5% per annum from the date of petition to till the date of realisation, within a period of eight weeks from the date of receipt of a copy of this order, whereupon, the claimant would be entitled to withdraw same forthwith. No costs.

Sd/-

Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar

KMI

To

The Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
FTC-III, Chennai.

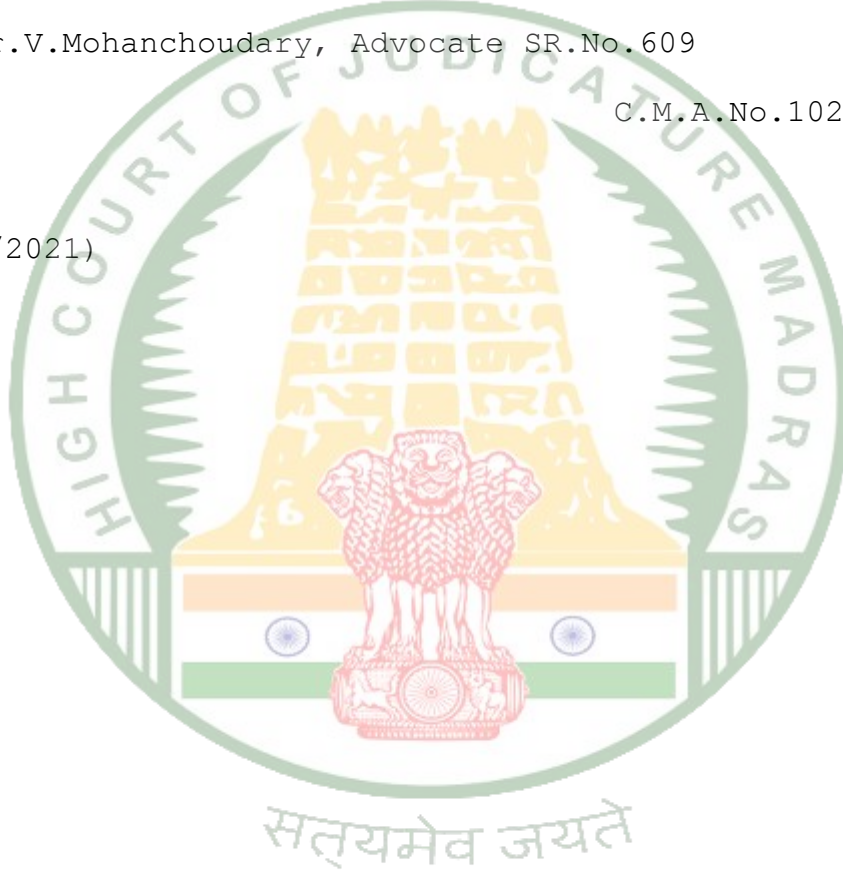
Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+2cc to Mr.V.Mohanchoudary, Advocate SR.No.609

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GMV (06/05/2021)



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