

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.1560 of 2013

Kaliappan

.. Appellant/Petitioner

Vs.

1.Sivakumar

2.Sankari Pallipalayam Bus Transport (p) Ltd.,
27A, Post Office Road, Sankari,
Salem District.

3.National Insurance company Ltd.,
Division-I, LRN Colony,
Sarada College Road, Salem-7

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree made in M.C.O.P.No.372 of 2009 on the file of the Motor Accident Claims Tribunal cum Fast Track Court No.4, Bhavani, Erode District dated 02.12.2011.

For Appellant :Mr.C. Kulanthivel
For Respondent-1 and 2:Ex-parte
For Respondent-3 : Mrs.N.B. Surekha

सत्यमेव जयते
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.C.O.P.No.372 of 2009 on the file of the Motor Accident Claims Tribunal cum Fast Track Court No.4, Bhavani, Erode District dated 02.12.2011.

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 13.08.2009 at about 3:30 p.m when the appellant was proceeding in a bus

bearing Registration No.TN-30-U-3578 from Sankari to Bhavani near G.S.T. Road, a container lorry bearing Registration No.HR-38-J-9226 came in the opposite direction and dashed against the bus. The accident occurred due to the rash and negligent driving of the driver of the bus. Due to the accident the appellant sustained grievous injuries. Hence he filed a claim petition before the Tribunal, claiming a sum of Rs.2,50,000/- 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 lorry belonging to the first respondent and insured with the second respondent and allowed the case in part and directed the third respondent/Insurance Company to pay a sum of Rs.27,130/- 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 fracture over the nose and left floor and contusion injure over the right thigh and lacerated wound over the left hand elbow and his three teeth was broken. 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 as per the accident register of Government Hospital at Sankari, the injured sustained only one injury which is simple in nature whereas, as per private wound certificate, given by Dr.Thambiraj, the appellant sustained four injuries, out of which, one injury is grievous in nature. However, the amount awarded by the Tribunal is highly excessive.

8.Despite serving notice, there is no representation for the first respondent. Hence, considering the paucity of time 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. Whether the negligence on the side of the first

respondent is the cause for the accident or not? 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 bus is the cause for the accident. The Appellant was examined as P.W.1 and he deposed that when he was proceeding in a bus bearing Registration No.TN-30-U-3578 from Sankari to Bhavani near G.S.T. Road, a container lorry bearing Registration No.HR-38-J-9226 came in the opposite direction and dashed against the bus. The accident occurred due to the rash and negligent driving of the driver of the bus. To substantiate the same Ex.P.1/F.I.R/Magazar/Rough sketch/Motor Vehicle Inspector's report was adduced on the side of the claimant. Therefore, the Tribunal arrived at a conclusion that the negligence exists on the side of the driver of the bus and as the insurer of the alleged vehicle involved in accident the third respondent/Insurance Company is liable to pay compensation.

11.The Tribunal further has observed that the respondents herein has not let in any documents and marked only one evidence. Nothing prevented them from marking any documents before the Tribunal, when the best documents are available with the respondents herein to challenge the negligence aspect. Therefore, this Court is of the view that the findings rendered on negligence aspect by the Tribunal are based on settled principles of law, probabilities of case and weightage of evidence and is perfectly valid in the eye of law and no interference is required.

12.With regard to quantum, the Tribunal considering the nature of injuries sustained by the appellant awarded Rs.15,000/- towards the head pain and sufferings, Extra nourishment, loss of income, Transport expenses. Considering Ex.P.6/X-ray report and other other medical bills awarded Rs.12,130/-. Thus, the total compensation was quantified at Rs.27,130/-.

13.In view of the above, this Court on re-appreciating the evidence observed that the Tribunal erred in not awarding compensation towards the head Disability. Moreover, the Tribunal has awarded Rs.15,000/- towards the head pain and sufferings, Extra nourishment, loss of income and Transport expenses approximately which is unfair. Hence, this Court is inclined to award the compensation under different heads. Considering Ex.P.5/Disability Certificate 20% is taken as disability suffered by the claimant and considering the year of accident Rs.3,000/- is determined per percentage and quantified Rs.60,000/- (Rs.3,000/- x 20%) towards the head disability. Considering the nature of injuries, Ex.P.2/wound certificate and Ex.P.3/Discharge summary Rs. 20,000/- and Rs.10,000/- is awarded under the head Pain and sufferings and loss of income. Apart

from this Rs.5,000/- each was awarded towards Transport, Extra nourishment and attendant charges. The amount awarded under the head medical expenses remains unchanged. Thus, the amount awarded by this Court is tabulated hereunder:

Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
Pain and sufferings, Extra nourishment, loss of income, Transport expenses. Pain and suffering Extra nourishment Transportation Loss of income	Rs.15,000/-	Rs.20,000/- Rs.5,000/- Rs.5,000/- Rs.10,000/-
Disability	-Nil-	Rs.60,000/-
Attendant charges	-Nil-	Rs.5,000/-
Medical Bills	Rs.12,130/-	Rs.12,130/-
Total	Rs.27,130/-	Rs.1,17,130/-

14. The Compensation amount of Rs.27,130/- is enhanced to Rs.1,17,130/-

15. In the result this appeal is partly allowed and the third respondent/Insurance Company is directed to deposit the amount awarded by this Court at the rate of 7.5% interest 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 along with interest and costs, after deducting the amount already withdrawn, if any, on making proper application before the Tribunal. No Costs.

सत्यमेव जयते

Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal cum Fast Track Court No.4,
Bhavani, Erode District

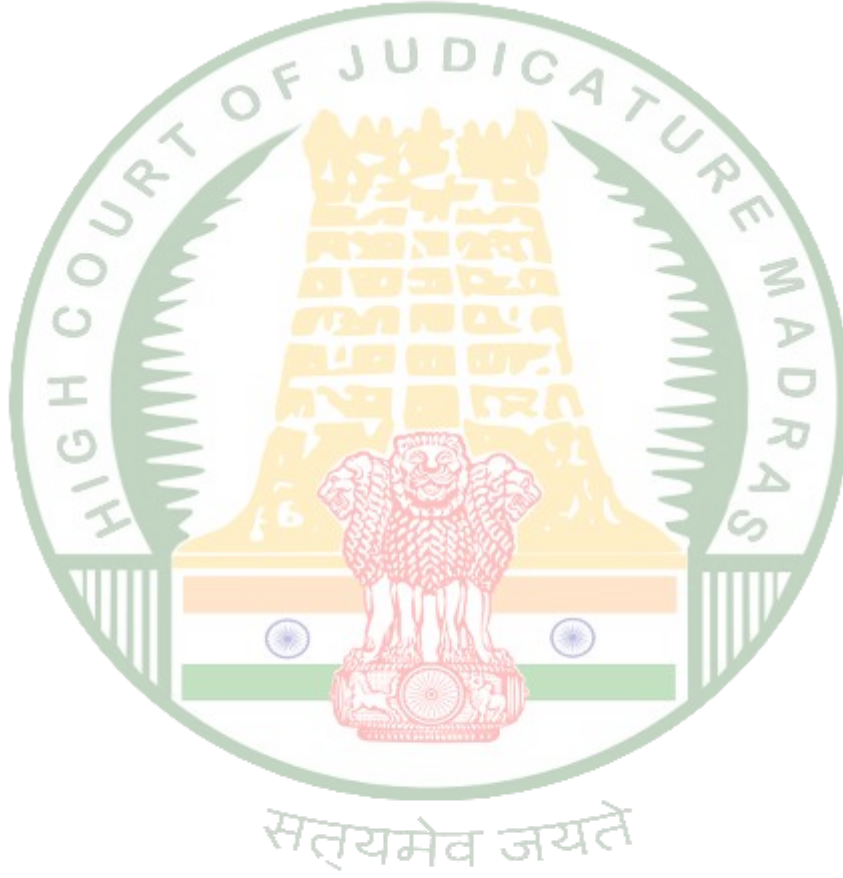
2. The Section Officer, VR Section,
High Court, Madras.

+1 cc to M/s.C.Kulanthaivel, Advocate Sr.No. 17900

+1 cc to M/s.N.B.Surekha, Advocate Sr.No. 18593

C.M.A.No.1560 of 2013

SJ(CO)
RMP(08/01/2021)



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