

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1939 of 2013

Viji @ Vijayakirthi

...Appellant/petitioner

Vs

1. D. Venkatesan

2. United India Insurance Co. Ltd.,
Old No.52, First Main Road,
Anna Nagar, Chennai - 600 040..... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and Decree dated 12.02.2013 and made in M.A.C.T.O.P.No. 3817/2007 on the file of the Motor Accident claims Tribunal and III Court of Small Causes, Chennai.

For appellant : Mrs. Subadra for Mrs.M.Malar
For respondent-2 : Mr.S. Arunkumar
R1 : Exparte

J U D G M E N T

This appeal has been filed by the appellant/claimant against the Judgment and Decree dated 12.02.2013 made in M.A.C.T.O.P.No. 3817 of 2007 on the file of the Motor Accident claims Tribunal and III Court of Small Causes, Chennai.

2.The appellant is the claimant. The first respondent is the owner of the vehicle and the second respondent is the insurer of the offending vehicle.

3. It is the case of the appellant that on 29.07.2005 at about 16.30 hours when the appellant was standing at Thirumullaivoyal, C.T.H. Road near Murugappa Polytechnic at that time a motor cycle bearing Registration No.TN-20-AY-2425 which was driven by its rider in a rash and negligent manner and knocked the appellant. Due to the impact the appellant sustained grievous injuries. The accident occurred due to the rash and negligence on the part of the rider of the two wheeler. Hence, the appellant filed a claim petition before the Tribunal,

seeking compensation of Rs.10,00,000/- and the Tribunal considering the materials available on record awarded a sum of Rs.1,33,350/- as compensation with interest at 7.5% p.a from the date of petition till the date of realization.

4. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come forward with this appeal before this Court.

5. In order to prove the claim before the Tribunal, on the side of the appellant two witnesses were examined viz., P.W.1 and P.W.2 and 7 documents viz., Ex.P1 to Ex.P7 were marked. There is no witness or documents on the side of the respondents.

6. Before the Tribunal, the appellant has filed a claim petition, wherein it has been stated that the appellant sustained Fracture in Right Parietal bone of tempo parietal bone, severe head injury and multiple injuries all over the body. He was engaged in plumbing work and due to the injuries sustained in the accident, he was not able to continue his job as before. Hence, he prayed to award Rs.10,00,000/- as compensation under several heads.

7. The respondent/Insurance Company also filed a counter before the Tribunal and they have resisted their claim by indicating that the first respondent herein/owner of the vehicle has violated the terms and conditions of the Insurance policy and the second respondent, who is the owner of the vehicle is liable to indemnify the first respondent.

8. On a perusal of the order passed the Tribunal, the negligence aspect was discussed elaborately. The Appellant was examined as P.W.1 and he had deposed that the accident has occurred due to the rash and negligence on the part of the rider of the motor cycle. Ex.P.1/Attested copy of FIR corroborates with the deposition of P.W.1. Hence the Tribunal, relying upon the above evidence arrived at a conclusion that the rider of the two wheeler is the cause for the accident. To controvert the same, no new facts or grounds are forth coming by the respondents. Hence, this Court is not inclined to interfere with the findings rendered on the negligence aspect and the same is confirmed as such.

9. With regard to quantum the Tribunal taking note of avocation of the claimant Rs.12,000/- is fixed as loss of earning and on the basis of Ex.P.2/Discharge Summary Rs.3,000/- and Rs.7,000/- is awarded towards Transport to Hospital and Extra Nourishment. Considering Ex.P.3/case sheet and treatment records and Ex.P.4/scan report Rs.30,000/- and Rs.350/- is

awarded towards pain and sufferings and Medical Expenses. P.W.2/Dr.Thiyagarajan examined the injured and assessed disability at 45% but, considering the nature of injuries sustained by the appellant the tribunal has taken 40% as disability and determined Rs.2,000/- per percentage and awarded Rs.80,000/- under the head Permanent Disability. Apart from this Rs.1,000/- is allowed under the head Damage to clothing. Thus, in toto the Tribunal has awarded Rs.1,33,350/- as compensation.

10. In view of the above this Court observed that no amount was awarded towards attender charges. Hence, Rs.2,000/- is awarded towards the same. The Tribunal has awarded Rs.12,000/- and Rs.3,000/- towards Loss of income and Transport to Hospital and the same is enhanced to Rs.15,000/- and Rs.5,000/- respectively. The Tribunal has awarded Rs.350/- towards Medical Expenses by taking note of Ex.R4/scan report. Considering the nature of injuries sustained by the appellant, this Court is inclined to award Rs.5,000/- is awarded Towards Medical Expenses. All other heads remains unchanged. Thus, the award passed by this Court is as follows:

S.No.	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of income	Rs.12,000/-	Rs.15,000/-
Transport to Hospital	Rs.3,000/-	Rs.5,000/-
Extra nourishment	Rs.7,000/-	Rs.7,000/-
Damage to clothing	Rs.1,000/-	Rs.1,000/-
Medical Expenses	Rs.350/-	Rs.5,000/-
Pain and sufferings	Rs.30,000/-	Rs.30,000/-
Permanent Disability	Rs.80,000/-	Rs.80,000/-
Attendant charges	-Nil-	Rs.2,000/-
Total	Rs.1,33,350/-	Rs.1,45,000/-

11. With the above said modification the award amount is enhanced to Rs.1,45,000/- from Rs.1,33,350/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed. The second respondent-Insurance Company is directed to deposit the amount awarded by this Court along with 7.5% p.a from the date of petition till the date of realization, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. Hence on

such deposit being made, the first respondent is directed to withdraw the enhanced award amount, by making proper application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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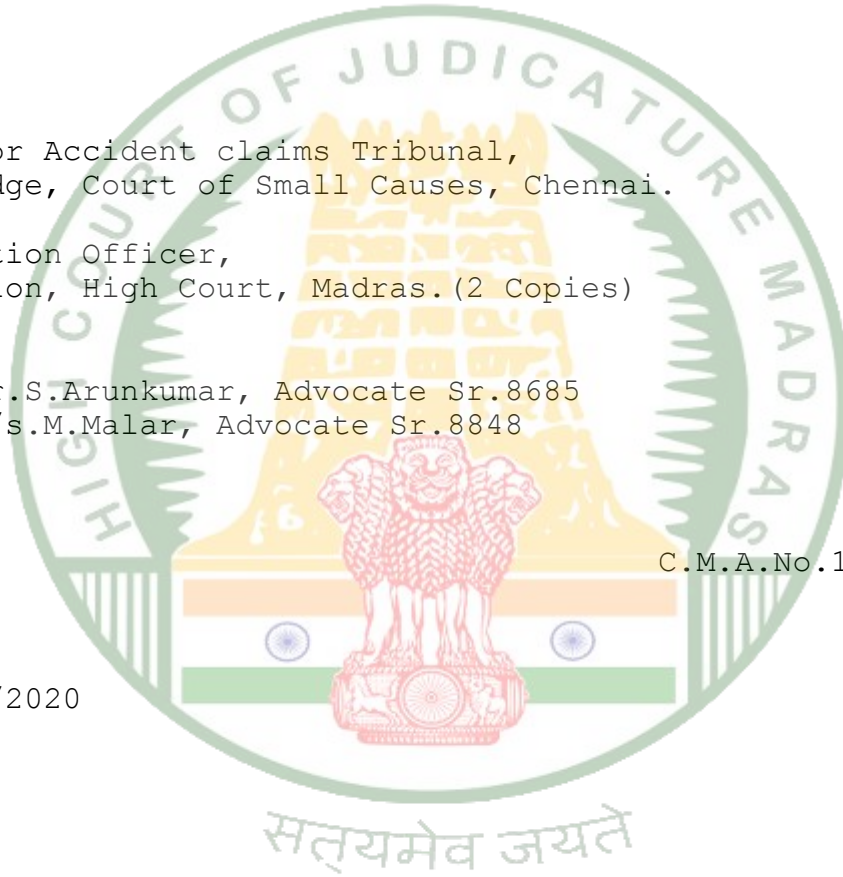
1.The Motor Accident claims Tribunal,
III Judge, Court of Small Causes, Chennai.

2.The Section Officer,
VR Section, High Court, Madras.(2 Copies)

+1cc to Mr.S.Arunkumar, Advocate Sr.8685
+1cc to M/s.M.Malar, Advocate Sr.8848

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mr[co]
srg 18/09/2020



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