

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2211 of 2012

R.Elangovan

... Appellant/ Petitioner

Vs.

1. SCL Service Pvt Ltd.,
No.250/135, Angappa Naicken Street,
Chennai - 1.
2. Reliance General Insurance Co. Ltd.,
No.23, Spurtank Road,
Chetpet, Chennai - 31. ... Respondents/ Respondents

(R1 set exparte in the Lower Court
Hence, notice may be dispensed with)

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 01.02.2012 made in M.C.O.P.No.4231 of 2009 on the file of the Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

For Appellant : Mr.K.Varadhakamaraj

For R2 : Mr.S.Arunkumar

R1 - Exparte

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 01.02.2012 made in M.C.O.P.No.4231 of 2009 on the file of the Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

2. The case of the appellant is that on 06.11.2009 at about 7.00 p.m., while the appellant was riding the Motorcycle bearing Registration No.TN-74-5442 from Cycle shop to Moolakadai near Madavaram Roundana, a Trailer Lorry bearing Registration No.TN-09-AK-7643 which was driven by its driver in a rash and negligent manner, hit against the back side of the appellant. Due to the impact, the appellant sustained grievous injuries, hence he was admitted for treatment in

C.M.O. Government Stanley Hospital, Chennai. At the time of accident, he was aged 29 years, and before the accident, he was doing Carpenter cum Barbending work and was earning Rs.450/- per day. Due to the injuries sustained in the accident, he became permanently disabled. Hence, he filed a petition before the Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai, claiming Rs.10,00,000/- as compensation from the first and second respondents as they are the owner and insurer of the Lorry involved in the accident.

3. Denying the allegations, the second respondent filed a counter affidavit before the Tribunal stating that the accident not occurred by the driver of the first respondent and therefore they are not liable to pay any compensation to the appellant. Further, it has been stated that the first respondent's driver had no valid licence, permit and fitness certificate on the date of accident and hence the appellant is not entitled to any compensation from them. Moreover, it has been stated that the alleged age, occupation, income and disability are not true and the amount of compensation claimed is highly excessive.

4. During the trial, on the side of the appellant, the appellant himself was examined as PW1, one Dr.Saichandran was examined as PW2, one Mr.Sitrarasu was examined as PW3 and Exs.P1 to P8 were marked. On the side of the respondents, neither any witness was examined nor any document was marked.

5. The Tribunal after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the appellant and awarded Rs.9,21,200/- as compensation as follows :

S.No.	Description	Amount
1.	Loss of Income	45,000
2.	Transport to Hospital	5,000
3.	Extra Nourishment	10,000
4.	Pain and Sufferings	35,000
5.	Loss of Earning Power	8,26,200
	Total	9,21,200

6. Aggrieved by the award, the appellant/claimant has filed this appeal before this Court stating that the Tribunal has erred in fixing the compensation and the same has to be corrected by this Court.

7. Heard the learned counsel for the appellant and the learned counsel for the second respondent, and perused the materials available on record.

8. On perusal of the award dated 01.02.2012 passed by the Motor Accident Claims Tribunal, Small Causes Court No.IV,

Chennai, it is observed that the Tribunal on perusal of Ex.P2 Accident Register Copy has found that the appellant had consumed alcohol at the time of accident. But, when there was no any supporting document to prove that how much alcohol the appellant had consumed at the time of accident, the Tribunal has fixed 50% of the liability on the appellant. Hence, this Court is inclined to modify the same. Accordingly, 25% of the liability is fixed on the appellant and the remaining 75% of the liability is fixed on the second respondent.

9. As far as the quantum of compensation is concerned, this Court finds that the sum awarded under the heads of Transportation, Extra Nourishment and Pain & Suffering is meager and also finds that the Tribunal has omitted to award compensation for Loss of Amenities, Attender Charges and Future Medical Expenses, hence inclined to rectify the same.

10. Accordingly, the compensation awarded by the Tribunal is modified as follows :

S.No .	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Loss of Income	45,000	45,000	Confirmed
2.	Transport to Hospital	5,000	20,000	Enhanced
3.	Extra Nourishment	10,000	20,000	Enhanced
4.	Pain and Sufferings	35,000	50,000	Enhanced
5.	Loss of Earning Power	8,26,200	8,26,200	Confirmed
6.	Attender Charges	-	25,000	Granted
7.	Loss of Amenities	-	75,000	Granted
8.	Future Medical Expenses	-	15,000	Granted
	Total	9,21,200	10,76,200	Enhanced by 1,55,000/-

11. Since this Court has fixed 25% of the liability on the appellant, the second respondent is liable to pay only Rs.8,07,150/- to the appellant out of the total compensation of Rs.10,76,200/-.

12. Accordingly, the second respondent is directed to deposit the said amount with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the appellant/claimant

is permitted to withdraw the same by filing a formal petition before the concerned Court, less the amount if any, already withdrawn.

13. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

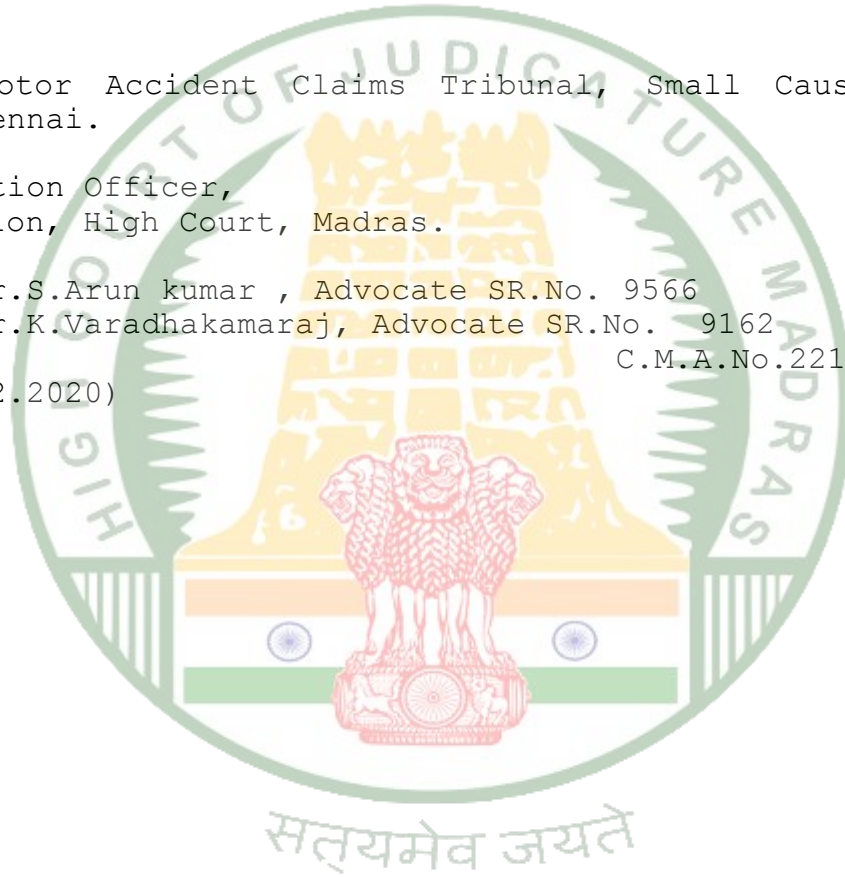
2.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.S.Arun kumar , Advocate SR.No. 9566

+1cc to Mr.K.Varadhakamaraj, Advocate SR.No. 9162

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A.Sk(22.12.2020)



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