

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.02.2020

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.2980 of 2011

Gopalakrishnan

... Appellant/Claimant

Versus

1.Rukumani

2.M/s. New India Assurance Company Ltd.,
Ram Complex,
29, Paramathi Road,
Namakkal.

... Respondents /Respondents

[R1 remained ex-parte before the Tribunal.

Hence the notice may be dispensed with]

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation amount awarded in Order and Decree dated 22.01.2009 made in M.C.O.P.No.1292 of 2003 on the file of the Motor Accidents Claim Tribunal / Second Additional District Judge cum Fast Track Court No.2, Salem District.

For Appellant : Mr.A.Yogaraj
for Mr.R.Marudhachalamurthy
For Respondents: Mr.C.Ramesh Babu, (for R2)
: Ex-parte - R1

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant [claimant], challenging the judgment and decree dated 22.01.2009 passed in M.C.O.P.No.1292 of 2003 on the file of the Motor Accidents Claim Tribunal (Second Additional District Judge cum Fast Track Court No.2), Salem District.

2.For the sake of convenience, hereinafter the parties are referred to as per their litigative status before the Tribunal.

3.It is a case of injury. The case of the claimant is that, on 13.08.2003 at about 17.15 hours, the claimant was travelling in a Bus bearing Registration No.TN-28-S-8889, from the Polytechnic where he was studying to his house. While the said Bus was nearing Seelanaickenpatty bus stop, the same was driven by its driver in a rash and negligent manner and he also applied the sudden brake. Due to the said impact, the claimant had lost his control/balance and rolled down from the bus through the front steps and he fell down on the road. Immediately, after the accident the claimant was brought to a Palaniyandi Mudaliar Memorial Hospital, Salem and admitted as an in-patient. Due to the accident, the claimant/appellant sustained grievous injuries and he is also unable to walk, now he could not do anything without the help of others. The claimant underwent prolonged treatment as in-patient and out-patient. Since the accident happened due to the rash and negligent driving of the driver of the first respondent's vehicle, which was insured with the second respondent, the first respondent (owner of the vehicle) and the second respondent (Insurance company) are jointly and severally liable to pay compensation to the claimant for the injuries sustained in the above said accident. A case has been registered in Crime No.433 of 2003 under Sections 279 & 337 of I.P.C., in T.I.W. Salem Police Station, as against the driver of the bus. Therefore, the claimant has filed the claim petition seeking compensation of Rs.3,00,000/- before the Tribunal.

4.The first respondent remained ex-parte before the Tribunal.

5.Opposing the claim made by the claimant, by filing counter, the second respondent/Insurance Company denied the accident itself and stated that only due to the negligent act of the injured the said accident had occurred. In fact, while the bus was moving slowly, the claimant suddenly ran up to catch the bus and after catching the bus, travelled on the foot-board, however, on seeing his friends, the claimant has suddenly got down from the bus, fell down and resultantly sustained injuries. Hence, the accident had occurred only due to the negligent act of the claimant. Further, the age, avocation and income of the appellant/claimant are denied and the claim of the claimant is also exorbitant, therefore, the Insurance Company sought for dismissal of the Claim Petition.

6.Before the Claims Tribunal, the appellant [Gopalakrishnan] examined himself as P.W.1 to prove his claim and he exhibited 5 documents as Ex.P1 to Ex.P5. On the side of the respondents neither oral nor documentary evidence was let in.

7. Having considered all the materials placed before the Tribunal, the Claims Tribunal came to the conclusion that the first respondent and the second respondent are jointly and severally liable to pay the compensation and awarded a sum of Rs.28,772/- as total compensation for the injuries sustained by the claimant/appellant. Aggrieved over the same, the claimant/appellant is before this Court with the present Civil Miscellaneous Appeal for enhancement of compensation.

8. When the appeal is taken up for hearing, I have heard the arguments of Mr.A.Yogaraj, learned counsel for the appellant, Mr.C.Ramesh, learned counsel appearing for the second respondent and also perused the records carefully.

9. Learned counsel for the claimant/appellant (injured) would contend that before the Claims Tribunal, in order to prove the fact that the claimant sustained grievous injuries, he had adduced three documents as Exs. B2 to B4, wherein, Ex.B2 is the wound certificate, Ex.B3 is the discharge summary and Ex.B4 is the CT Scan report. However, the Claims Tribunal did not consider the validity of those documents and came to the conclusion that the claimant/appellant is only entitled to Rs.5,000/- as compensation for the injuries sustained by him, which is nothing but erroneous one. Accordingly, the claimant has prayed to enhance the compensation.

10. Per contra, the learned counsel appearing on behalf of the second respondent would contend that the Tribunal had carefully considered all the relevant materials produced by the claimant/appellant, at that time of disposing the claim petition and came to the conclusion that the claimant/appellant is entitled to Rs.28,772/-, and the said award does not warrant any interference.

11. Now, on going through the award passed by the Claims Tribunal, a sum of Rs.5,000/- was awarded for the injuries sustained by the claimant/appellant, Apart from, under the head of medical expenses. Based upon the medical bill produced by the claimant under Ex.P5 a sum of Rs.8,772/- has been awarded. Further, under the head of loss of education, the Claims Tribunal has awarded a sum of Rs.15,000/-. Except under those three heads no amount was allowed under other heads.

12. It is not in dispute that Exs.B2 to B4 were marked on the side of the claimant only to prove the fact that he sustained grievous injuries in the alleged accident. Though the said document reveals fact that the claimant sustained injury, to prove his partial permanent disability, he has not produced any disability certificate on his side. So, without calculating the percentage of the disability, this Court is not in a position to award any further amount under the head of partial permanent

disability. Hence, the amount awarded by the Claims Tribunal of Rs.5,000/- as compensation towards injuries and a sum of Rs.8,772/- towards medical expenses are just and proper and the same warrant no interference.

13. On the other hand, in respect of the heads pain and sufferings, transport charges, attendant charges, no amount was awarded by the Claims Tribunal. So, I am of the considered opinion that a sum of Rs.1,000/- has to be awarded under the head of transportation charges, a sum of Rs.7,000/- has to be awarded towards Pain and Sufferings and a sum of Rs.2,000/- has to be granted towards Attendant charges. Thus, the award passed by the Claims Tribunal is modified and enhanced as follows:-

Description	Amount awarded by Tribunal	Amount modified and awarded by this Court
Disability	Rs.5,000/-	Rs.5,000/-
Medical Expenses	Rs.8,772/-	Rs.8,772/-
Loss of Education	Rs.15,000/-	Rs.15,000/-
Pain and Sufferings	-	Rs.7,000/-
Transportation charges	-	Rs.1,000/-
Attendant charges	-	Rs.2,000/-
Total	Rs.28,772/-	Rs.38,772/-

14. In the result,

[i] The Civil Miscellaneous Appeal is partly allowed.

[ii] The appellant/claimant in M.C.O.P.No.1292 of 2003 is entitled to the award amount of Rs.38,772/- [Rupees Thirty eight thousand, Seven Hundred and Seventy two only] with 7.5% interest per annum from the date of petition till the date of realisation.

[iii] The first and second respondent [Insurance Company] are jointly and severally liable to pay the compensation to the appellant/claimant and this Court directs to deposit the award amount along with accrued interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

[iv] On such deposit, the appellant [claimant] in this appeal is permitted to withdraw the same, by moving necessary application before the Tribunal.

[v] The claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

klt
To

The Additional District Judge cum Fast Track Court No.2/
Motor Vehicle Accidents Claims Tribunal,
Salem District.

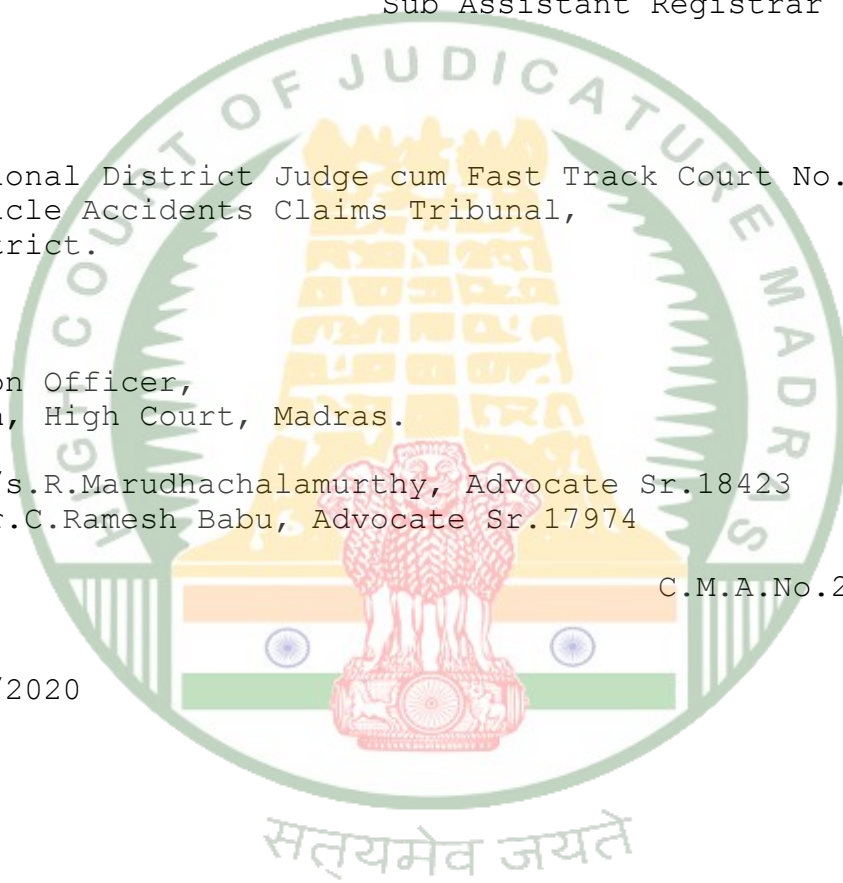
Copy to

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

+1cc to M/s.R.Marudhachalamurthy, Advocate Sr.18423
+1cc to Mr.C.Ramesh Babu, Advocate Sr.17974

C.M.A.No.2980 of 2011

srg 24/11/2020



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