

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2020

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2332 of 2012

K.Ashwini

... Appellant/Petitioner

Vs.

1. M.Ezhil Arasan

2. Royal Sundaram Alliance Insurance Co. Ltd.,
No.21, Patullos Road,
Chennai - 600 002. ... Respondents/Respondents

(R1 set exparte in the Lower Court)

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 18.06.2012 made in MACT.O.P.No.271 of 2010 on the file of the VI Judge, Motor Accidents Claims Tribunal, Small Causes Court, Chennai.

For Appellant : M/s.P.T.Salim Fathima & Mr.S.Elango

For R2 : Mr.E.Rajadurai
For Mr.M.B.Gobalan
R1 - Exparte

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 18.06.2012 made in MACT.O.P.No.271 of 2010 on the file of the VI Judge, Motor Accidents Claims Tribunal, Small Causes Court, Chennai.

2. The case of the appellant is that on 24.09.2009 at about 9.00 p.m., while the appellant was proceeding in Scorpio Car bearing Registration No.TN-20-AC-5000 in G.S.T.Road near Palayanoor Koot Road, Padalam, Kancheepuram District from North to South direction, due to mechanical defect, the Car suddenly swerved towards right, ran over the Central Median, gone to the Western side of the road and dashed against a Lorry bearing Registration No.AP-26-U-3169 which was coming from South to

North direction. Due to the impact, the appellant sustained multiple fractures and injuries all over the body, and immediately she was admitted in Government General Hospital at Chengalpet for treatment. At the time of accident, she was aged 21, and before the accident, she was working as Management Trainee and was earning Rs.4,000/- per month. Due to the injuries sustained in the accident, she became permanently disabled. Hence, she filed a petition before the VI Judge, Motor Accidents Claims Tribunal, Small Causes Court, Chennai, claiming Rs.6,00,000/- as compensation from the first and second respondents as they are the owner and insurer of the Car involved in the accident.

3. Denying the allegations, the second respondent insurance company filed a counter affidavit stating that the accident not occurred due to rash and negligent driving of the first respondent's driver. Hence, the appellant is not entitled to maintain the claim petition. Further, it has been stated that the driver of the first respondent was not having valid and effective licence on the date of accident. Hence they are not liable to indemnify the appellant. Moreover, it has been stated that the alleged age, income, occupation 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 herself was examined as PW1, one Dr.R.Amarnath was examined as PW4 and Exs.P1 to P6, P15 & P16 were marked. On the side of the respondents, one Mr.Gagandeep Agarwal was examined as RW1 and Exs.R1 to R5 were marked.

5. The Tribunal, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimant and awarded Rs.77,653/- as compensation as follows :

S.No.	Description	Amount
1.	Loss of Income for four months at the rate of Rs.4,500/- per month	13,500
2.	Transportation	3,000
3.	Extra Nourishment	2,000
4.	Damage to clothes	500
5.	Medical Expenses	18,153
6.	Pain and Suffering	20,000
7.	Disability of 15% at Rs.2,000/- per percentage	30,000

S.No.	Description	Amount
	Total	77,653

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 18.06.2012 passed by the VI Judge, Motor Accidents Claims Tribunal, Small Causes Court, Chennai, it is observed that the Tribunal while perusing the FIR copy and the MVI Report marked as Exs.P1 & R4 has found that the accident was not due to any mechanical defect and it was only due to rash and negligent driving of the first respondent's driver, and therefore, has held that the first respondent's driver was the cause for the alleged accident. As far as quantum of compensation is concerned, it is observed that the appellant had lost his income for two months due to the injuries sustained in the accident, but the Tribunal has awarded compensation only for one month under the said head and this Court is inclined to modify the same. Further, it is observed that the sum of Rs.2,000/- awarded per percentage of disability and the sum awarded under the heads of Transport, Extra Nourishment and Damage to clothes are found to be meager and therefore this Court is inclined to enhance the same. Moreover, it is observed that the Tribunal has not awarded any compensation towards Attender charges. During the period of treatment, the appellant would have spent some amount for Attender, and considering the same, this Court is inclined to award Rs.2,000/- under the said head. The sum awarded under the heads of Medical Expenses and Pain and Suffering is reasonably awarded by the Tribunal and therefore they need not any interference of this Court.

9. In view of the observations made by this Court, the compensation awarded by this Tribunal is modified as follows :

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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 for two months at the rate of Rs.4,000/- per month	4,000	8,000	Enhanced
2.	Transportation	3,000	5,000	Enhanced
3.	Extra Nourishment	2,000	5,000	Enhanced
4.	Damage to clothes	500	1,000	Enhanced
5.	Medical Expenses	18,153	18,153	Confirmed
6.	Pain and Suffering	20,000	20,000	Confirmed
7.	Disability of 15% at Rs.4,000/- per percentage	30,000	60,000	Enhanced
8.	Attender Charges	-	2,000	Granted
	Total	77,653	1,19,153 Rounded off by 1,19,200	Enhanced by 41,547/-

10. As insurer of the first respondent's vehicle, the second respondent is directed to deposit the said amount of Rs.1,19,200/- with interest at the rate of 6% 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 first appellant/claimant is permitted to withdraw the same by filing a formal petition before the concerned Court, less the amount if any, already withdrawn.

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

Sd/-
Assistant Registrar

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Sub Assistant Registrar

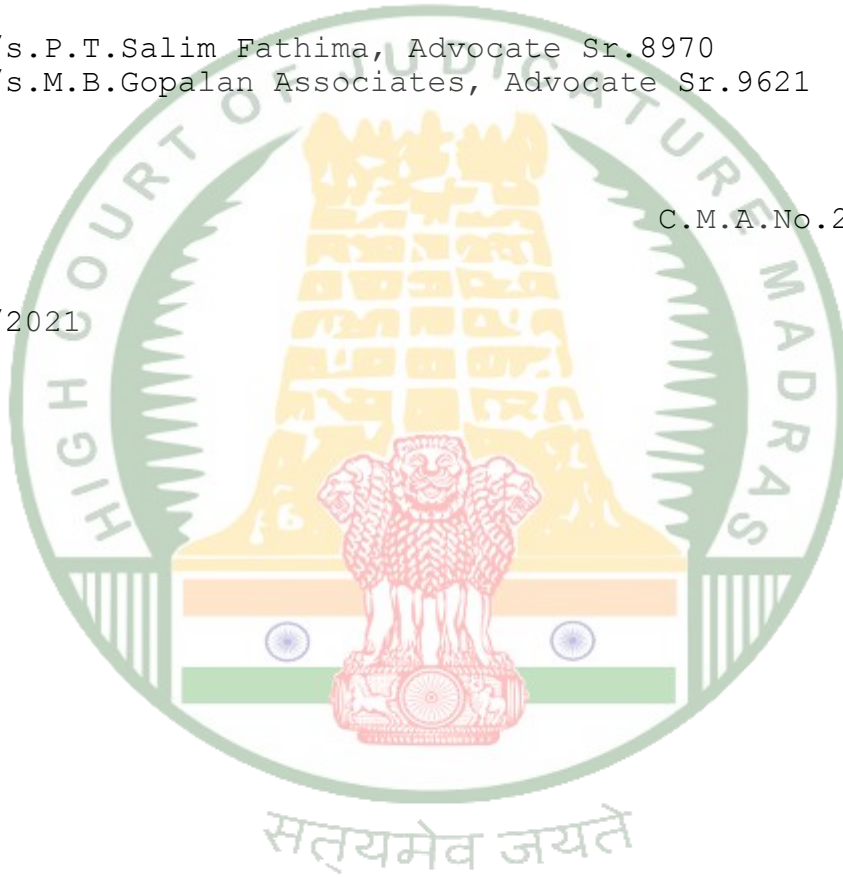
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To

1. The Learned VI Judge,
Small Causes Court (Motor Accidents Claims Tribunal),
Chennai.
2. The Section Officer,
VR Section, High Court,
Madras.

+1cc to M/s.P.T.Salim Fathima, Advocate Sr.8970
+1cc to M/s.M.B.Gopalan Associates, Advocate Sr.9621

C.M.A.No.2332 of 2012

srg 07/05/2021



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