

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2384 of 2013

P.Banu Kumar

... Appellant

Vs.

1.Mark J.Fernandez

(R1 was set ex-parte in Lower Court)

2.The New India Assurance Co. Ltd.,

No.1090, E.V.R. Periyar Salai,

1st Floor, A.R.Complex,

Chennai - 84.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 26.12.2011 made in M.C.O.P.No.4129 of 2008 on the file of the Fast Track Court No.II, Additional District Judge (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mr.C.Ramesh Babu

R1 : Set ex-parte in Lower Court

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 26.12.2011 made in M.C.O.P.No.4129 of 2008 on the file of Fast Track Court No.II, Additional District Judge (Motor Accidents Claims Tribunal), Chennai.

2. The appellant is the claimant in M.C.O.P.No.4129 of 2008 on the file of Fast Track Court No.II, Additional District Judge (Motor Accidents Claims Tribunal) Chennai. He filed the said claim petition claiming a sum of Rs.2,50,000/-as compensation for the injuries sustained by him in the accident that took place on 17.09.2008.

3. The case of the appellant is that on 17.09.2008 at about 7.30 hours, while the petitioner was riding his Motorcycle bearing Registration No.TN-05-X-7787 at Nungambakkam High Road, near Chetpet signal, Chennai, the first respondent's Scooty bearing

Registration No.TN-05-W-2472 came rashly and negligently in the same direction and hit the petitioner, which resulting in the petitioner sustaining grievous injuries. At the time of accident, he was aged about 41 years and working as an Assistant Engineer and was earning Rs.15,000/- per month. In spite of treatment, the petitioner becomes permanently disabled and not able to do his routine as earlier. Hence the appellant filed a petition before the Fast Track Court No.II, Additional District Judge (Motor Accidents Claims Tribunal), Chennai claiming a sum of Rs.2,50,000/- as compensation from the respondents.

4. Denying the allegations, the second respondent-Insurance Company has filed a counter affidavit stating that the accident was purely due to the negligent riding of the motor cycle by the petitioner and not due to the rash and negligent driving of the first respondent's Scooty. The injuries are exaggerated for the purpose of higher compensation. Moreover, the income and avocation of the petitioner is disputed and the amount of compensation claimed is highly excessive.

5. During the trial before the Tribunal, on the side of the petitioner, the petitioner himself was examined as PW1 and marked certain documents as Exs.P1 to P16 and one Dr.K.J.Mathiazhagan was examined as PW2. No witness was examined and document has been marked on the side of the respondents.

6. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to negligent driving of the first respondent TVS Scooty and directed the respondents 1 and 2 to pay a sum of Rs.1,70,000/- as compensation to the petitioner. Not being satisfied with the amount awarded by the Tribunal, the petitioner/appellant herein has come out with the present appeal seeking enhancement of compensation.

7. Heard Mr.K.Varadha Kamaraj, learned counsel appearing for the appellant/claimant and Mr.C.Ramesh Babu, learned counsel appearing for the second respondent.

8. On perusal of the award dated 26.12.2011 passed by the tribunal, it is observed that the appellant had sustained fracture of radius and ulna in the left side forearm and had marked Ex.P6, Ex.P15 & Ex.P16 to prove his disability. Since the petitioner is a Government employee and his earning capacity was not affected due to the injuries sustained by him, the Tribunal had fixed the disability as 35% and awarded Rs,70,000/- i.e. Rs.2,000/- per percentage of disability under the said head.

Considering the age and nature of injuries sustained by him the Tribunal has rightly awarded a sum of Rs.70,000/- towards disability and this Court is not inclined to interfere with the same. The Tribunal has awarded a sum of Rs.10,000/- towards pain and sufferings, which is found to be meagre and hence the same is hereby enhanced to Rs.20,000/-. Moreover, it is observed that the appellant had marked the medical bills as Ex.P9 to prove the expenses made for the treatment and only after considering the same, the Tribunal has awarded Rs.75,000/- towards Medical Expenses and the same is hereby confirmed. The sum awarded under all other heads i.e. Rs.15,000/- towards expenses on attender and miscellaneous expenses and loss of earning during the period of probable is reasonably awarded by the Tribunal, hence, the same are also hereby confirmed.

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

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning, attender charges & miscellaneous expenses	15,000/-	15,000/-	confirmed
2.	Medical Expenses	75,000/-	75,000/-	confirmed
3.	Pain and Sufferings	10,000/-	20,000/-	enhanced
4.	Permanent Disability	70,000/-	70,000/-	confirmed
	Total	Rs.1,70,000/-	Rs.1,80,000/-	enhanced by Rs.10,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,70,000/- is hereby enhanced to Rs.1,80,000/- together along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The respondents 1 and 2 are jointly and severally directed to deposit the enhanced award amount now determined by this Court along with interest and the amount already deposited if any, within a

period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS-III-MDU)

//True Copy//

Sub Assistant Registrar

rsi

To

1.The Additional District Judge
(Motor Accidents Claims Tribunal),
Fast Track Court No.II, Chennai.

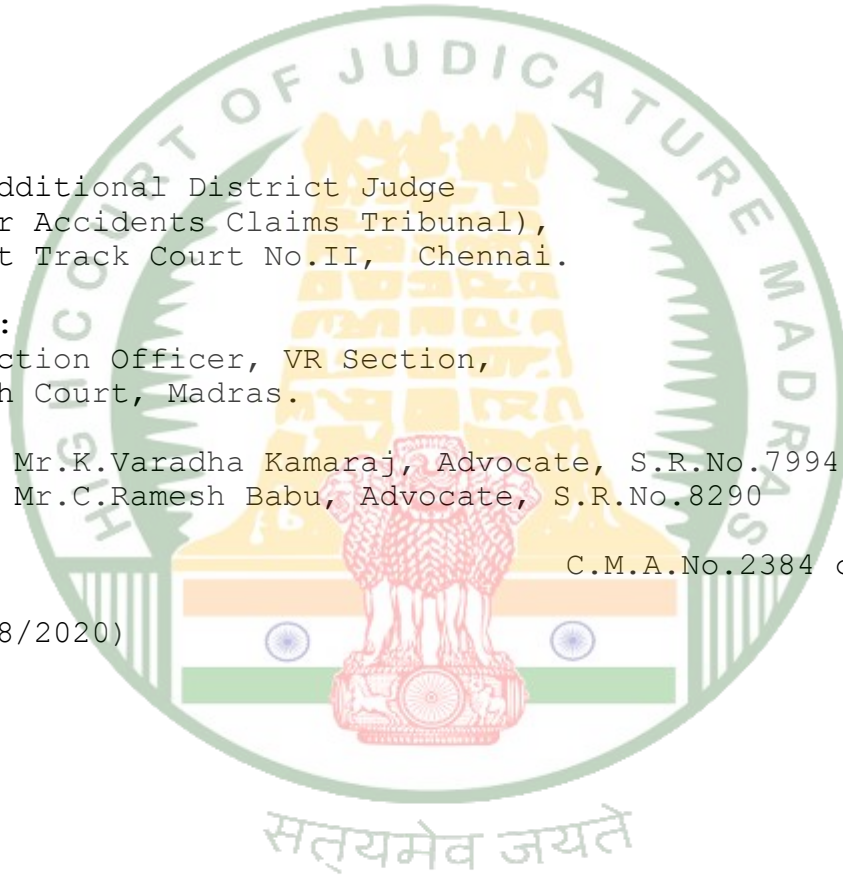
Copy to:
The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.7994

+1cc to Mr.C.Ramesh Babu, Advocate, S.R.No.8290

C.M.A.No.2384 of 2013

KS(CO)
CB(18/08/2020)



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