

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.2535 of 2013

C.Palani

... Appellant

Vs

1. Popular Mega Motor India Ltd.,
No.59, 1st Avenue, 100 feet road,
Ashok Nagar, Chennai

2. The ICICI Lombard General Insurance Co., Ltd.,
No.140, Chottabai Centre,
2nd and 3rd Floor, Nungambakkam,
Chennai - 34.

... Respondents

Prayer:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree made in M.C.O.P.No.3528 of 2010 on the file of Motor Accidents Claims Tribunal and II Small Causes Court, Chennai dated 28.03.2013.

For Appellant

: Mr. M.Selvam

For Respondents

: Mr.T.Sundarrajan for R1

Mrs.R.Sreevidhya for R2

J U D G M E N T

The appellant herein, who is the claimant has preferred this Civil Miscellaneous Appeal against the Judgment and Decree made in M.C.O.P.No.3528 of 2010 on the file of Motor Accidents Claims Tribunal (II Small Causes Court) Chennai dated 28.03.2013.

2. The case of the appellant / claimant is that on 10.12.2009 at about 11.45 a.m., the appellant was walking on the Poonamallee High Road, near Maduravoyal, opposite to M.M.R.Chicken Stall, at that time, the driver of the 1st respondent's van bearing reg.no.TN09-AR-8931 had driven the vehicle in a rash and negligent manner and endangering the public safety, came to the wrong side, hit the appellant. Before the accident, he was working as a head mason and was earning a sum of Rs.500/- per day. Due to the said accident, the appellant sustained grievous injuries in his right hand, leg and head injury and was not able to perform his duty, as he had performed before the accident. Therefore, claiming a sum of Rs.6,00,000/- , the appellant has approached the tribunal.

3. In contrary, the 2nd respondent / Insurance Company has filed a

counter denying all the averments of the appellant. Further, the said accident was caused by the rash and negligent driving of the vehicle driven by the appellant and the 1st respondent being owner of the vehicle, is liable to compensate the appellant. The compensation claimed by the appellant is very exorbitant and seeks to dismiss the claim petition filed by the appellant.

4. The Tribunal by considering the pleadings, counter averments, evidences and materials available on record has awarded a sum of Rs.1,94,500/- as compensation to the appellant under various heads and same is as under: Feeling aggrieved against the said compensation, the appellant / claimant has come up with the present appeal.

Sl.No	Name of Heads	Amount Tribunal	awarded by
1	Loss of Income for 3 months		Rs.15,000/-
2	Transportation		Rs.5,000/-
3	Extra Nourishment		Rs.5,000/-
4	Damage to clothes		Rs.500/-
5	Medical Expenses		Rs.64,000/-
6	Loss of amenities of life and mental agony to the appellant		Rs.5,000/-
7	Pain and Sufferings		Rs.20,000
8	Disability of 40% at the rate of Rs.2,000/- per disability		Rs.80,000
TOTAL			Rs.1,94,500/-

5. The learned counsel for the appellant submitted that the Tribunal had awarded only sum of Rs.80,000/- towards disability, but the appellant had suffered fracture in right ulna and fracture of radial head right and is facing difficulty in walking, climbing stairs and lifting heavy objects. Further, the Tribunal had awarded only a meager amount under various, which needs to be interfered with by this Court.

6. The learned counsel for the 1st respondent / owner of the vehicle contended that the appellant, who was a pedestrian had suddenly crossed the road, thereby invited the accident. Further, the appellant had sustained only simple injury and the amount claimed is exorbitant hence seeks to set aside the award passed by the Tribunal.

7. The learned counsel for the 2nd respondent / Insurance Company denies all the averments stated by the appellant. The appellant is bound to prove the age, occupation, income, place, date and time of accident. Further, due to the negligence act of the appellant, the 2nd respondent / Insurance company cannot be held responsible. Hence pleaded to dismiss the appeal.

8. Heard the learned counsel for the appellant and the learned

counsel for the respondents and perused the documents placed on record.

9. On the perusal of the order passed by the Tribunal, it is seen that the appellant was examined himself as P.W.1 and Ex.P.1, FIR has been marked on the basis of the complaint given by one Chandran. Further, the evidence of P.W.1 corroborates with Ex.P.1, FIR and the same was not contradicted on the side of the respondents, hence the Tribunal rightly held that the accident had occurred only due to the rash and negligent driving of the driver of the 1st respondent. Since the 1st respondent's vehicle was insured with the 2nd respondent, the Tribunal held that the 2nd respondent is liable to pay the compensation to the appellant. Further, taking shelter of various documents filed on either side, the Tribunal has awarded a sum of Rs.1,94,500/- to the appellant.

10. That apart, P.W.2, Doctor, namely, N.Saichandran, had deposed that the appellant had suffered fracture of right ulna and fracture of radial head right and that the same are united with widening, the radius fracture mal united, however movements are restricted and he had assessed 45% partial permanent disability. However, during cross examination, the Doctor had contented that he had not given any treatment to the appellant.

Hence the Tribunal had rightly fixed 40% disability suffered by the appellant and by awarding Rs.2,000/- per percentage, a sum of Rs.80,000/- was awarded by the Tribunal. This Court is not inclined to accept the same, because of the fact that the appellant had suffered fracture of right ulna and fracture of radial head right and that the fractures have been united with only widening and the movements have been restricted, coupled with the fact that the appellant was working as Head mason and he cannot perform the work as he was doing before the accident, hence this Court is inclined to award a sum of Rs.3,000/- per percentage, thereby $[40\% \times 3,000 = \text{Rs.1,20,000/-}]$ a sum of Rs.1,20,000/- is hereby awarded towards the disability.

11. Moreover, the Tribunal had erred in not awarding any compensation towards the Attenders charges, taking into consideration the nature of injuries and treatment given, definitely, the appellant would not be able to do all his day today activities without a help of another person, hence a sum of Rs.5,000/- is hereby awarded towards Attenders charges. Except the above said two heads, all the other amount under various heads awarded by the Tribunal stand confirmed. The enhanced amount awarded by this Court is tabulated as under:-

Sl. No	Name of Heads	Amount awarded by Tribunal	Enhanced / confirmed	Amount awarded by this Court
1	Loss of Income for 3 months	Rs.15,000/-	Confirmed	Rs.15,000/-
2	Transportation	Rs.5,000/-	Confirmed	Rs.5,000/-
3	Extra nourishment	Rs.5,000/-	Confirmed	Rs.5,000/-
4	Damage to Clothes	Rs.500/-	Confirmed	Rs.500/-
5	Medical Expenses	Rs.64,000/-	Confirmed	Rs.64,000/-
6	Loss of amenities of life and mental agony to the appellant	Rs.5,000/-	Confirmed	Rs.5,000/-
7	Pain and sufferings	Rs.20,000/-	Confirmed	Rs.20,000/-
8	Disability of 40% at the rate of Rs.2,000/- per disability	Rs.80,000/-	Enhanced	-
	Disability of 40% at the rate of Rs.3,000/- per disability	-	Enhanced	Rs.1,20,000/-
9	Attenders charges	-	Enhanced	Rs.5,000/-
TOTAL				Rs.2,39,504/-

12. In total, a sum of Rs.2,39,504/- is awarded to the appellant with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation. The 2nd respondent / Insurance company is directed to deposit the enhanced award amount on behalf of the 1st respondent to the Credit of M.C.O.P.No.3528 of 2010 on the file of the Motor Accident Claims Tribunal, Chennai (In the II Court of Small Causes, Chennai), along with interest and costs as determined by this Court, less 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 being made, the appellant is permitted to withdraw the amount, less the amount if any, already withdrawn, by filing an appropriate application before the Court concerned.

With the above said observations and directions, the present Civil Miscellaneous Appeal is partly allowed. No costs.

05.02.2020

Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Judgment
ssd

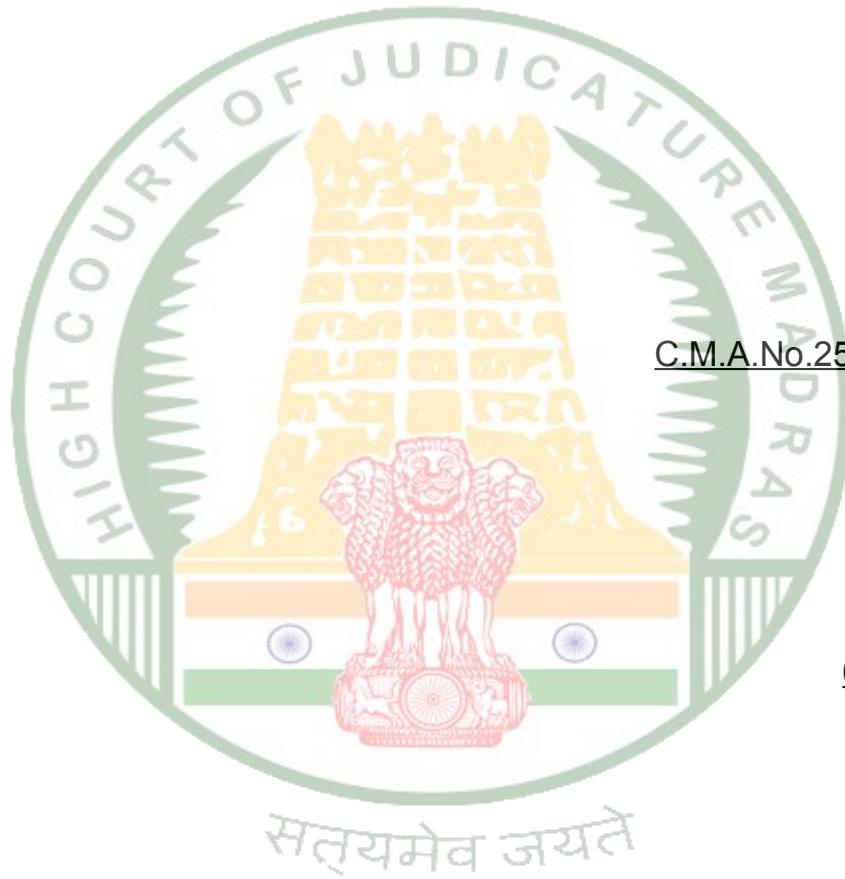
To

1. The Motor Accidents Claims Tribunal cum
II Small Causes Court, Chennai
2. The Section Officer,
VR Section,
Madras High Court, Chennai

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V.BHAVANI SUBBAROYAN, J.,

ssd



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