

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.599 of 2011

Durai S/o.Mannu Naicker

...Appellant/Petitioner

Versus

1.M. Gopal

2.United India Insurance Co. Ltd.,
No.38, Anna Salai, Chennai - 2.

(The 1st respondent was set ex-parte before the
Tribunal)

...Respondents

Prayer: Civil Miscellaneous Appeal filed against the order and
decree dated 19.10.2010 made in M.C.O.P.No.1064 of 2004 on the
file of the Motor Accident Claims Tribunal, IV Judge, Court of
Small Causes, Chennai.

For Appellant : Mrs.Subadra
For Mrs. Malar

For 2nd Respondent: Mr.D. Bhaskaran
R1 - Exparte

J U D G M E N T

The Claimant has filed this appeal against the Judgment and
order made in M.C.O.P. No.1064 of 2004 dated 19.10.2010 on the
file of the Motor Accident Claims Tribunal, IV Court of Small
Causes, Chennai, seeking for enhancement of compensation.

2. The Facts of the case briefly are as follows:

On 29.11.2003, while the appellant herein was riding his
by-cycle along the 100 feet road junction, near Thirumangalam,
a Lorry bearing registration No.TMF 4356 was driven by the 1st
respondent herein in rash and negligent manner without following
the Traffic rules dashed the appellant. As a result, the
appellant sustained grievous injuries and was admitted at
Government Hospital as inpatient for treatment. Due to the

injuries in the accident, the appellant filed Claim petition in M.C.O.P. No.1064 of 2004 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai, wherein he was awarded a sum of Rs.1,09,000/- as compensation. Not satisfied with the award passed by the Tribunal, the appellant has filed the present appeal seeking for enhancement of compensation.

3. The learned counsel for the appellant would submit that the Tribunal has awarded a meagre sum of Rs.1,09,000/- (Rupees One Lakhs and Nine Thousand Only) without considering the injuries sustained by the appellant like fractures in the neck, right hip and right knee and multiple injuries all over the body even though it was confirmed the fact of the accident due to rash and negligent driving of the 1st respondent. Hence, the appellant is entitled to get compensation for Rs.3,00,000/- (Rupees Three Lakhs Only) as claimed before the Tribunal.

4. On the other hand, the learned counsel for the 2nd respondent would submit that the appellant was awarded after considering the entire oral and documentary evidence. Hence, there is no need to interfere with the award passed by the Tribunal.

5. Heard both side and perused the available materials on records.

6. The factum of the accident, the manner of the accident being rash and negligence on the part of the 1st respondent and entitlement of the claimant/appellant for compensation under Section 163A are not in dispute. The quantum of the compensation awarded by the Tribunal is alone disputed.

7. On perusal of the award, the Tribunal has confirmed that the accident had happened due to the rash and negligent driving of the 1st respondent. It is corroborated comparing the oral evidence of P.W.1 along with Ex.P1, F.I.R. , Ex.P2, Attested copy of rough sketch, and Ex.P11, attested copy of charge sheet. Neither any oral evidence was let in nor documents were marked on the side of the 2nd respondent to dispute the claim of the appellant. Further, the appellant is stated to have been worked as mason drawing daily wages @ 200 per day in the age of 29 years at the time of the accident whereas the loss of income has been fixed as Rs.3,000/- per month fixing per day income of Rs.100/-. Having considered the nature of injuries and duration

of treatment as inpatient in the hospital, the appellant would have been prevented from attending his work to a maximum of six months instead of 3 months as fixed by the Tribunal. Hence, a sum of Rs.18,000/- (6 X 3000), is hereby awarded towards loss of income. Further, the amount awarded under the heads of Transport expenses, Extra Nourishment, and pain and sufferings are very meager, hence, the sum of Rs.5,000/- each is awarded under the head of Transport expenses and extra-nourishment and a sum of Rs.30,000/- is hereby awarded towards pain and sufferings. The Tribunal has awarded compensation for permanent disability and medical expenses with full satisfaction according to age and injuries sustained by the appellant. In addition, as the Tribunal has not awarded any amount towards the attendant and amenities charges, a sum of Rs.5,000/- each is hereby awarded for the same. Thus, the modified award amount are as follows:

SL No	Particulars	Amount Awarded by Tribunal (in Rs.)	Amount (in Rs.)
1	Loss of Income	9,000.00	18,000.00
2	Transport Expenses	2,000.00	5,000.00
3	Extra-nourishment	3,000.00	5,000.00
4	Medical Expenses	5,000.00	5,000.00
5	Pain, shock and Sufferings	20,000.00	30,000.00
6	Attendant Charges	---	5,000.00
7	Permanent disability	70,000.00	70,000.00
8	Amenities Charges	---	5,000.00
Total Amount		1,09,000.00	1,43,000.00

8. Thus, the compensation awarded by the Tribunal has been enhanced by Rs.34,000/- from Rs.1,09,000/- to Rs.1,43,000/- with interest @ 7.5% per annum from the date of petition till the date of deposit. The Insurance Company is directed to deposit the award amount enhanced by this Court to the credit of M.C.O.P. No.1064 of 2004 after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the same along with the interest.

9. In the result, the appeal is partly allowed. Accordingly, the impugned award passed by the Tribunal is modified. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

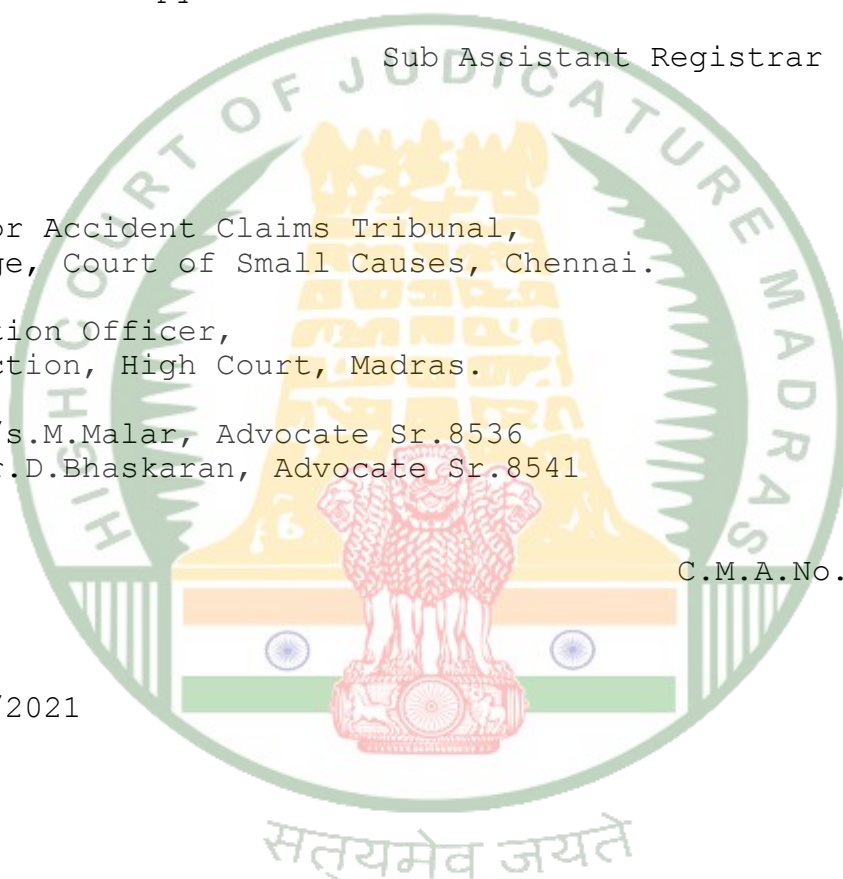
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To:

- 1.The Motor Accident Claims Tribunal,
IV Judge, Court of Small Causes, Chennai.
- 2.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to M/s.M.Malar, Advocate Sr.8536
+1cc to Mr.D.Bhaskaran, Advocate Sr.8541

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