

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2020

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2755 of 2013
and M.P.No.1 of 2013

National Insurance Company Ltd.,
Motor Third Party Claim Cell,
No.751, Anna Salai,
Chennai

... Appellant

Vs.

1.Baskaran
2.M.Dilli

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 01.12.2010 and made in MCOP.No.32/2005 On the file of the Motor Accidents Claims Tribunal of Chengalpattu (Court of Additional Subordinate Judge).

For Appellant : Mr.S.Vadivel

For Respondents : NA

JUDGMENT

This Civil Miscellaneous Appeal has been filed aggrieved by the Judgment and Decree dated 01.12.2010 and made in MCOP.No.32/2005 On the file of the Motor Accidents Claims Tribunal of Chengalpattu (Court of Additional Subordinate Judge).

2.The case of the Appellant is that on 21.03.2004 at about 8.45 a.m. while the first respondent was walking along Chengalpattu to Kancheepuram Road near Palur Battai Transformer, a lorry bearing Registration No.TN-23-8100 was driven by its driver in a rash and negligent manner came from the same direction and dashed against the first respondent and caused this accident. Immediately, he was taken to Chengalpattu Medical College, Hospital, Chengalpattu and admitted as inpatient. There he took treatment from 21.03.2004 to 22.03.2004 and thereafter he took treatment at Puttur Bone setting Hospital, Puttur. In spite of the treatment, he became permanent disabled and he could not do his normal work as before. Hence, he filed a petition before

the Motor Accidents Claims Tribunal of Chengalpattu (Court of Additional Subordinate Judge), claiming Rs.2,00,000/- as compensation under various heads.

3.The appellant insurance company has filed a counter affidavit stating that the driver of the second respondent had no valid driving license at the time of accident. Hence, they are not liable to pay any compensation. The alleged age, occupation, income and the disability of the first respondent is not true and the quantum of compensation claimed is excessive and untenable.

4.During the trial, on the side of the claimant, he himself examined as PW1, one Dr.Kannan Isaac was examined as PW2 and Exs.P1 to P4 were marked. On the side of the second respondent as well as the appellant, neither any witness was examined nor any document was marked.

5.The Motor Accidents Claims Tribunal of Chengalpattu (Court of Additional Subordinate Judge) after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the first respondent and awarded as compensation as stated below:

S.No.	Description	Amount awarded by the Tribunal
1.	25% Disability	Rs.96,000/- (Rs.2,000x12x 16x 25/100)
2.	Transport to Hospital	Rs.5,000/-
3.	Extra Nourishment	Rs.10,000/-
4.	Attender Charges	Rs.5,000/-
5.	Damage to clothing and article	Rs.2,000/-
6.	Pain and Suffering	Rs.50,000/-
7.	Mental Agony	Rs.10,000/-
8.	Medical Expenses	Rs.500/-
	Total	Rs.1,78,500.00

6.Aggrrieved by the award, the appellant has filed this appeal before this Court.

7.The learned counsel for the appellant submitted that the Tribunal ought not to have applied the multiplier method for awarding amounts under the head disability when admittedly the first respondent had not suffered any total and permanent disability. The Tribunal failed to see even according to the first respondent, the first respondent was treated as inpatient only for one day i.e. on 21.03.2004 to 22.03.2004.

In the said circumstances, the Tribunal ought not to have awarded amount under the head attender charges. The Tribunal failed to see that the accident had occurred on 21.03.2004 but P.W.2 examined the first respondent on 07.08.2010 for assessing the disability of the first respondent i.e. after 6 years. The Tribunal also failed to see except the wound certificate and the drag card no other documents were produced by the first respondent to prove the injuries and the nature of treatment taken by the first respondent.

8.The learned counsel for the appellant further submitted that the Tribunal ought not to have awarded a sum of Rs.50,000/- under the head pain and suffering when admittedly had not produced any follow up treatment records except the wound certificate Ex.P.3. The Tribunal completely carried away by sympathy and passed a huge award in favour of the first respondent which is highly disproportionate to the injuries suffered by the first respondent and the period of treatment taken by the first respondent. The Tribunal ought not to have taken the percentage of disability assessed by P.W.2 as is it because admittedly he assessed the disability after six years.

9.Heard learned counsel for the appellant and perused the materials available on record.

10.On perusal of the award passed by the Tribunal, it is observed that the disability assessed by the Tribunal was 25% as per statement given by PW2 that the first respondent could not raise his right hand beyond 90 degree and he could not lift heavy article and work by using his right hand, this Court is inclined to reduce the disability at 15% due to the fact that the disability arrived by PW2 is not a permanent disability and it is only a partial permanent disability. Further, observed that the first respondent took treatment as inpatient for only one day but the Tribunal has awarded excess amount under the head of transport. Hence, this Court is inclined to reduce the same at Rs.2,000/-. It is seen that the sum awarded under the head of pain and suffering is found to be excessive, hence the same is reduced at Rs.30,000/- by this Court. The sum awarded under the head of damage to clothing and article is found to be meagre and the same is enhanced at Rs.5,000/- by this Court. The sum awarded under the other heads i.e., Attender Charges Rs.5,000/- and Mental agony Rs.10,000/- are just and reasonable, hence the same is hereby confirmed.

11.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 the Tribunal	Amount awarded by this Court	Amount confirmed or enhanced or reduced
1.	25% Disability	Rs.96,000/- (Rs.2,000x12x16x 25/100)	Rs.57,600/- (Rs.2,000x12x16x 15/100)	reduced
2.	Transport to Hospital	Rs.5,000/-	Rs.2,000/-	reduced
3.	Extra Nourishment	Rs.10,000/-	-	-
4.	Attender Charges	Rs.5,000/-	Rs.5,000/-	confirmed
5.	Damage to clothing and article	Rs.2,000/-	Rs.5,000/-	enhanced
6.	Pain and Suffering	Rs.50,000/-	Rs.30,000/-	reduced
7.	Mental Agony	Rs.10,000/-	Rs.10,000/-	confirmed
8.	Medical Expenses	Rs.500/-	-	-
	Total	Rs.1,78,500.00	Rs.1,09,600/-	Reduced Rs.68,900/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed. Accordingly, the appellant insurance company is directed to deposit Rs.1,09,600/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization as fixed by the Tribunal, 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 respondent/claimant is permitted to withdraw the same by filing a formal petition before the concerned Court. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-III-MDU)

//True Copy//

Sub Assistant Registrar

pam

To

1.The Additional Subordinate Judge,
Motor Accidents Claims Tribunal of Chengalpattu,
Chengalpattu.

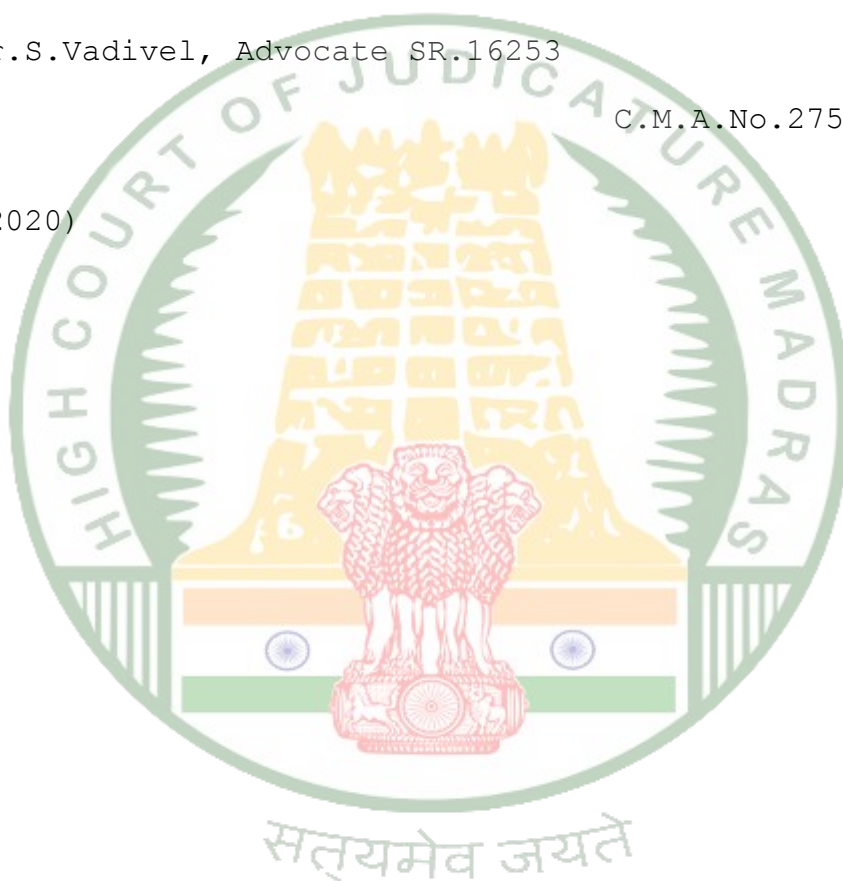
Copy to:

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

+lcc to Mr.S.Vadivel, Advocate SR.16253

C.M.A.No.2755 of 2013

SPD(CO)
CB(28/12/2020)



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