

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2836 of 2013

V.Selvakumar @ Selvam

... Appellant/Petitioner

vs.

1.J.Raj Kumar

2.The New India Assurance Co. Ltd.,

No.45, IInd Line Beach, Moore Street,
Chennai - 1.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 10.06.2009 in M.C.O.P.No.1988 of 2004 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.A.N.Viswanatha Rao
for M/s.Senthilswamy Associates

For Respondents : Mr.N.Anand for R2
Exparte - R1

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.1988 of 2004 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai. He filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that took place on 17.11.2003.

2. On 17.11.2003, at about 18.30 hours, when the appellant / claimant was travelling as a passenger in U.K.Auto on Pantheon road, over bridge, Egmore, Chennai, an auto bearing Registration No.TN 09 R 6169 hit the auto in which the appellant / claimant was travelling, as a result of which, the appellant / claimant sustained grievous injuries. The first respondent is the owner and the second respondent is the insurer of the Auto bearing Registration No.TN 09 R 6169. The

contention of the appellant / claimant is that the accident took place due to the rash and negligent driving of the driver of the Auto bearing Registration No.TN 09 R 6169. Therefore, he filed the claim petition seeking compensation for the injuries sustained by him.

3. Before the Tribunal, on the side of the appellant / claimant, PW1 to PW4 were examined and Exs.P1 to P15 were marked. On the side of the respondents, no documentary or oral evidence was marked.

4.The first respondent remained absent before the Tribunal and therefore, he was set ex-parte. The New India Assurance Company contested the claim petition. After analysing the evidence on record, the Tribunal awarded compensation of Rs.1,09,500/- together with interest at the rate of 9.5% per annum. Not satisfied with the award passed by the Tribunal, the appellant has filed this appeal.

5. The learned counsel appearing for the appellant / claimant submitted that due to the accident, the appellant / claimant sustained fracture of right medial malleolus tibia, fracture of left talar neck die, dil and head injuries and the Tribunal ought to have awarded the compensation as claimed in the petition for pain and sufferings and extra nourishment. He also submitted that Rs.15,000/- should have been awarded for loss of earning. He further submitted that atleast Rs.2,000/- per percentage of disability should have been awarded by the Tribunal. He also submitted that the Tribunal erred in not awarding any amount towards future loss of earning power. Therefore, he prayed for enhancement of compensation.

6. The learned counsel appearing for the second respondent submitted that the Tribunal after considering both oral and documentary evidences in a proper perspective, awarded compensation, which is not meagre. The appellant / claimant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant / claimant and second respondent and perused the materials available on record.

8. From the claim petition, it is seen that the appellant / claimant was aged 27 years on the date of the accident and that he has been working as QCS machine operator at Plast Tech Engineering, Chennai, earning a sum of Rs.5,000/- per month. From the discharge summary (Ex.P5), prescriptions (Ex.P6) and Puthur sheet (Ex.P8), it is seen that due to the accident, he sustained fracture in right medial meuleouls tibia and left talar neck D10 and D11, head

injury and multiple injuries over the body. In the circumstances, Rs.10,000/- awarded towards loss of earning is very meagre in the opinion of this Court. Considering the nature of injuries, the appellant / claimant would not have been in a position to attend work atleast for five months. Therefore, a sum of Rs.25,000/- (Rs.5,000/- x 5 months) is awarded towards loss of earning. A perusal of Discharge Summary (Ex.P5) shows that he had taken inpatient treatment at Pallava Hospital, Chennai. Hence, Rs.3,000/- and Rs.3,000/- awarded towards transport to hospital and extra nourishment are hereby enhanced to Rs.5,000/- and Rs.5,000/-. Since no amount is awarded by the Tribunal towards attender's charges, Rs.10,000/- is awarded towards the same. All the other heads awarded by the Tribunal are just and reasonable and they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1	Loss of earning	10,000	25,000
2	Transport to Hospital	3,000	5,000
3	Extra nourishment	3,000	5,000
4	Medical expenses	3,500	3,500
5	Mental Agony	10,000	10,000
6	Pain and sufferings	40,000	40,000
7	Permanent Disability	40,000	40,000
8	Attender's Charges	Nil	10,000
	Total	Rs.1,09,500/-	Rs.1,38,500/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,09,500/- is hereby enhanced to Rs.1,38,500/- together with interest at the rate of 9.5% 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 second respondent / Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, to the credit of MCOP.No.1988 of 2004 on the file of the Motor Accident Claims Tribunal / III Court of Small Causes, Chennai 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

//True Copy//

Sub Assistant Registrar

mbi

To

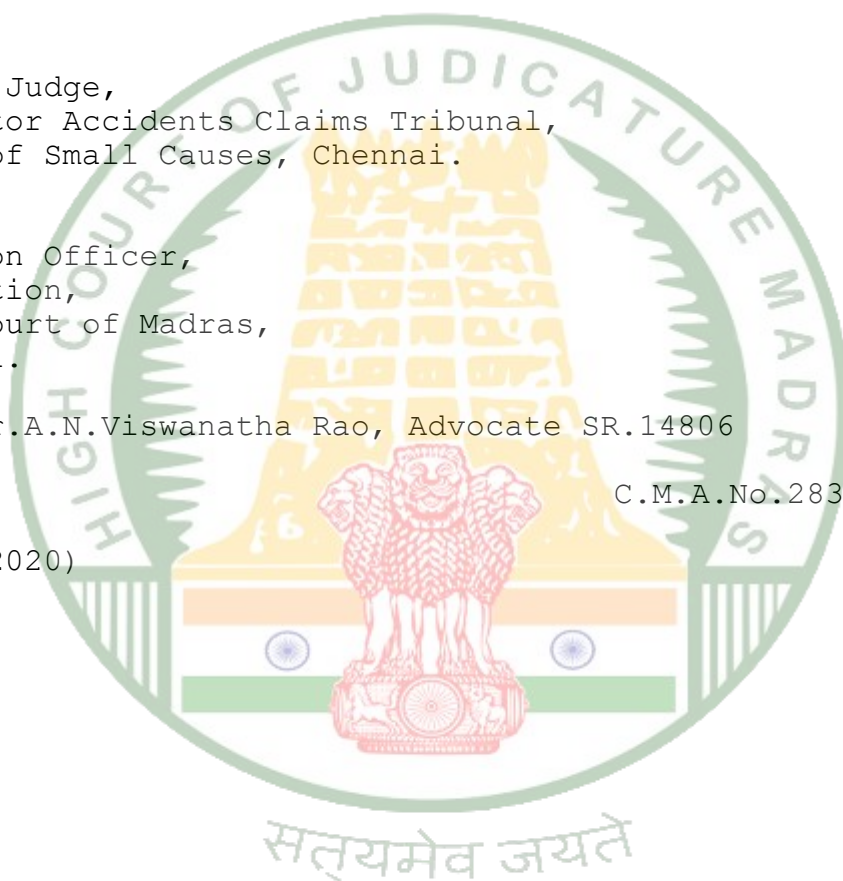
1.The III Judge,
The Motor Accidents Claims Tribunal,
Court of Small Causes, Chennai.

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

+1cc to Mr.A.N.Viswanatha Rao, Advocate SR.14806

C.M.A.No.2836 of 2013

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



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