

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.02.2020

CORAM:

THE HONOURABLE Mrs Justice V.BHAVANI SUBBAROYAN

C.M.A.No.2894 of 2013

Siddique

...Appellant/Petitioner

Vs

1.Gopalsamy

2.The Divisional Manager,
United India Insurance Co. Ltd.,
No.46, Katpadi Raod,
Vellore.
(R1 remained Ex-parte
before Tribunal).

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree of the Motor Accident Claims Tribunal (Principal Sub Judge), Tiruvannamalai in M.A.C.T.O.P.No.367 of 2001 dated 14.03.2007.

For Appellant : Mrs.Subadra
for M/s.Malar
For Respondent-2 : Mr.D.Bhaskaran
R1- Exparte

JUDGMENT

As against the finding of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Tiruvannamalai in M.A.C.T.O.P.No.367 of 2001 dated 14.03.2007, in fixing 25% contributory negligence on the appellant and for enhancement of compensation, the present appeal has been filed by the appellant/claimant.

2.The brief facts leading to the filing of the present appeal is as follows:

a)On 05.10.2000 at about 10.00 p.m., when the appellant was riding in a motor cycle as a pillion rider, at Thondaraipet road fish market, a van bearing registration No.TN-25-B-9799 driven by the first respondent, which was insured with second respondent herein, came in a rash and negligent manner and

dashed against the motor cycle causing grievous injuries to the appellant.

b)The Tribunal, after analysing the oral and documentary evidence, has held that neither the owner of the motor cycle nor the insurer of the motor cycle were made as parties and as contended by the insurance company, it creates suspicion that the driver of the motor cycle had no valid driving license at the time of accident since he was not produced before the Court. It was also brought to the notice that owner of the vehicle was not present at the place of occurrence and hence, fixed contributory negligence as 75% for the first respondent, whose vehicle is insured with the second respondent. Thus, directed the respondents to pay the compensation to the claimant.

c)The learned Principal Subordinate Judge, (MACT) Thiruvannamalai had passed the following award on 14.03.2007:-

Heads	Amount awarded
Loss of future earning capacity (18,000x30x16/100)	Rs.86,400/-
Transportation, pain & sufferings and attendant benefits	Rs.5,000/-
Medical Expenses	Rs.5,000/-
Loss of Income during treatment period	Rs.5,000/-
Total	Rs.1,01,400/-

Thus, directing the respondents herein jointly and severally to pay 75% of the award amount to the appellant which comes to Rs.76,050/- together with interest at 7.5% from the date of claim till the date of realization as compensation.

3.Aggrrieved by fixation of 25% liability on the appellant and quantum of compensation awarded by the Tribunal, the present appeal has been filed seeking enhancement of compensation.

4.Heard Mrs.Subadra, learned counsel for the appellant and Mr.D.Bhaskaran, learned counsel appearing on behalf of the second respondent/Insurance Company.

5.According to the learned counsel for the appellant, the Tribunal under the impugned award has erroneously assessed the monthly salary of the injured and fixed the annual income at Rs.18,000/-. According to him, the appellant had taken treatment in the hospital for 3 months and the doctor has assessed disability at 60%, without proper appreciation, disability has been reduced to 30%. He further submitted that the amount awarded towards permanent disability is not a just and reasonable, as the appellant had sustained fractures.

6.The learned counsel for the appellant further contended that the amount awarded by the Tribunal together under transport, attendant benefits and pain and sufferings are on the lower side.

7.The learned counsel for the appellant submitted that without proper appreciation of evidence, the Tribunal had fasten 25% liability on the appellant and awarded 75% compensation to him, which needs interference and also pleaded for enhancement of compensation under other heads.

8.Per contra, the learned counsel for the second respondent submitted that the compensation awarded by the Tribunal is just and reasonable and warrants no interference.

9.Considering the materials available on record, having examined the impugned award and having heard the submissions of the respective counsels, this Court is of the view that as the owner and insurer of the motor cycle were not impleaded and also that the motor cycle driver was not produced before the Court, which arises a doubt that no valid license will be available with him at the time of accident as contended by the Insurance company. However, considering the age and nature of injuries sustained by the appellant, the contributory negligence is fixed at 15% on the part of the appellant. In view of the submissions made by the appellant that the amount awarded by the Tribunal under the heads namely, medical expenses, transportation, pain and sufferings, loss of income during treatment has to be enhanced and accordingly, a sum of Rs.10,000/- each for medical expenses, transportation, pain and sufferings, a sum of Rs.5,000/- has been granted towards attendant benefits and Rs.18,000/- is awarded towards loss of income during treatment period as the appellant has taken treatment for nearly 4 months. Thus, the amount awarded by the Tribunal has been modified to the following effect:

Heads	Amount Awarded by Tribunal	Amount Awarded by this Court	Amount granted or enhanced or confirmed
Loss of future earning capacity (18,000x30x16/100)	Rs.86,400/-	Rs.86,400/-	confirmed
Medical expenses	Rs.5,000/-	Rs.10,000/-	enhanced

Heads	Amount Awarded by Tribunal	Amount Awarded by this Court	Amount granted or enhanced or confirmed
Transportation, Pain & sufferings and attendant benefits	Rs.5000/-	Rs.10,000/- (Transportation)	enhanced
Pain and sufferings	-	Rs.10,000/-	granted
Attendant Benefits	-	Rs.5000/-	granted
Loss of Income during treatment period	Rs.5,000/-	Rs.18,000/-	enhanced
Total	Rs.1,01,400/-	Rs.1,39,400/-	Rs.1,18,490/- (85% compensation)

10. In the result, the Civil Miscellaneous Appeal is partly allowed and the award dated 14.03.2007 passed by the Motor Accident Claims Tribunal (Principal Subordinate Judge), Tiruvannamalai in M.A.C.T.O.P.No.367 of 2001, is hereby modified from Rs.1,01,400/- to Rs.1,39,400/- and that by fixing the liability at 15% from 25% on the appellant/claimant, the second respondent/Insurance Company is directed to pay the claimant/appellant a sum of Rs.1,18,490/- instead of Rs.76,050/-. The second respondent is directed to deposit the enhanced amount to the credit of M.A.C.T.O.P.No.367 of 2001, on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Tiruvannamalai together with interest 7.5% per annum from the date of claim till the date of deposit within a period of three weeks from the date of receipt of this order. On such deposit being made, the appellant is permitted to withdraw the said sum by filing an appropriate application. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP

To

1.The Motor Accident Claims Tribunal,
(Principal Sub Court),
Tiruvannamalai.

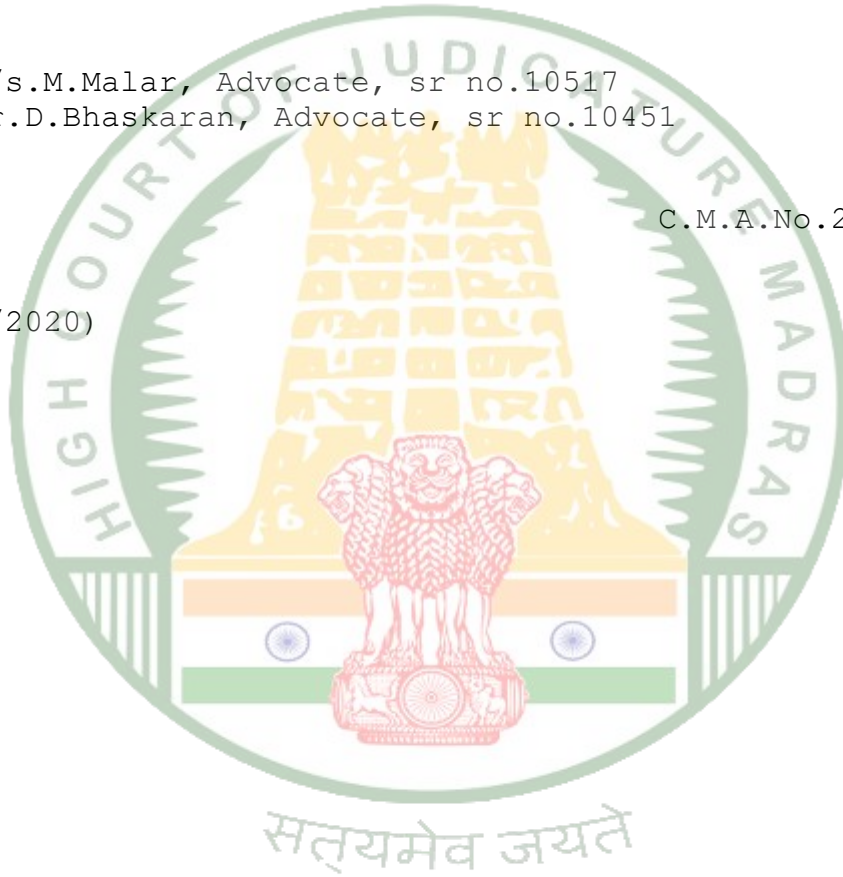
2.The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to M/s.M.Malar, Advocate, sr no.10517

+1cc to Mr.D.Bhaskaran, Advocate, sr no.10451

C.M.A.No.2894 of 2013

GJ(CO)
RMP(10/12/2020)



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