

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2020

CORAM

THE HON'BLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3088 of 2013

Minor Maniarasu

S/o.Balu

represented by father Balu

... Appellant/Petitioner

- Vs -

1. Elumalai

S/o.Arumugam

2. The Divisional Manager,

Bajaj Allianz General Insurance Company Limited,

No.25/26, Prince Towers,

5th Floor, College Road,

Nungambakkam, Chennai-6.

.... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 28.02.2011 made in M.A.C.T.O.P.No.685 of 2006 on the file of the Motor Accident Claims Tribunal (Additional Subordinate Judge) Tiruvannamalai.

For Appellant : Mrs.Subadra
for Ms.M.Malar

For Respondents : R1-Exparte
R2-Mr.Vijayaraghavan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant, aggrieved by the judgment and decree dated 28.02.2011 made in MACT.O.P.No.685 of 2006 by the Motor Accident Claims Tribunal, Additional Subordinate Judge, Thiruvannamalai by raising the following grounds:-

(i) The Tribunal failed to consider the nature of injuries sustained by the claimant.

(ii) The Tribunal ought to have awarded more under the heads of pain and sufferings, attender charges and

permanent disability.

2. The case of the appellant is that on 14.08.2005 at about 9.00.a.m when the claimant (minor) was walking in front of one Periyannayagam's house at Tindivanam Road, a two wheeler bearing registration No.TN-25-F-2354, which was driven by the first respondent in a rash and negligent manner, dashed against him, due to which, the claimant sustained fracture in his left leg and grievous injuries all over his body. The claimant was admitted at Government General Hospital, Tiruvannamalai and thereafter, admitted in the Government General Hospital, Chennai from 14.08.2005 to 19.08.2005. Due to the said injuries sustained, the claimant had permanent 20% permanent disability and filed a claim petition seeking an amount of Rs.1,00,000/- as compensation. A case in Crime No.456 of 2005 was registered for the offences under Sections 279 and 337 of IPC.

3. A counter statement was filed by the second respondent denying all the averments and had stated that the claimant was seriously injured in the alleged accident and puts the petitioner to strict proof of the medical expenses and that the compensation claimed is highly excessive and therefore, the second respondent prayed for dismissal of the claim petition. It is further stated that if at all the second respondent is liable to pay compensation, it is only to the extent of the terms and conditions of the Insurance Policy.

4. On the side of the claimant, two witnesses have been examined and marked Exs.P1 to P9. On the side of the respondents one Nagarajan was examined and marked one exhibit. The Court below, after considering the oral and documentary evidence, has awarded a sum of Rs.56,000/- as compensation with 7.5% interest, by judgment dated 28.02.2011. Aggrieved by the said judgment, the claimant preferred the present appeal seeking enhancement of compensation.

5. The learned counsel for the appellant submitted that the Tribunal ought to have awarded under the heads of Medical expenses and loss of amenities. He would submit that the future prospects of the appellant/claimant has not been taken into consideration. He would further submit that the Tribunal ought to have awarded more on the heads of Transport Expenses, Extra Nourishment and Attender charges. Therefore, he prays for enhancement of compensation.

6. The learned counsel for the second respondent-Insurance Company submitted that the amount awarded is just and reasonable and the various aspects have been considered by the Tribunal and awarded the amount, which has to be sustained.

7. Heard both sides and perused the available materials on record.

8. On going through the materials available on record, the Court below, after considering the various aspects, has come to the conclusion that only due to the rash and negligent act of the first respondent, the accident had occurred and fastened the liability on the respondents. The Court below awarded a sum of Rs.2000/- for Transportation, a sum of Rs.2,000/- for Extra Nourishment, a sum of Rs.2,000/- for attender charges, a sum of Rs.10,000/- for pain and sufferings and for disability a sum of Rs.40,000/-. The Tribunal has not awarded any amount towards loss of amenities and this Court is inclined to award a sum of Rs.10,000/- on the head. Regarding the injuries sustained by the appellant, the Doctor, who had given a disability certificate, fixed his disability as 20% and the Court below has rightly awarded a sum of Rs.40,000/- for disability factor, which is reasonable. The Court below awarded a sum of Rs.2,000/- for transportation and the same can be increased to a sum Rs.10,000/-. Regarding Nourishment, the Tribunal awarded a sum of Rs.2,000/- and the same can be increased to Rs.5,000/-. Towards attender charges, a sum of Rs.2,000/- has been awarded by the Tribunal and the same is increased to Rs.5,000/-. For pain and sufferings, the Tribunal awarded a sum of Rs.10,000/- and the same is also increased to Rs.20,000/-. The final amount of compensation now determined is tabulated below:-

Heads	Amount (Rs.)
Transportation	10,000/-
Pain and sufferings	20,000
Nutrition	5,000
Attender Charges	5,000
Loss of amenities	10,000
Disability of 20% at the rate of Rs.2000/- per percentage	40,000
Total	90,000/-

9. This Civil Miscellaneous Appeal is partly allowed. The respondent is directed to deposit Rs.90,000/-, less if any amount already deposited, with interest at 7.5% per annum, within eight (8) weeks from the date of receipt of a copy of this order, whereupon the claimant would be entitled to withdraw same by filing formal application. No costs.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

KMI
To

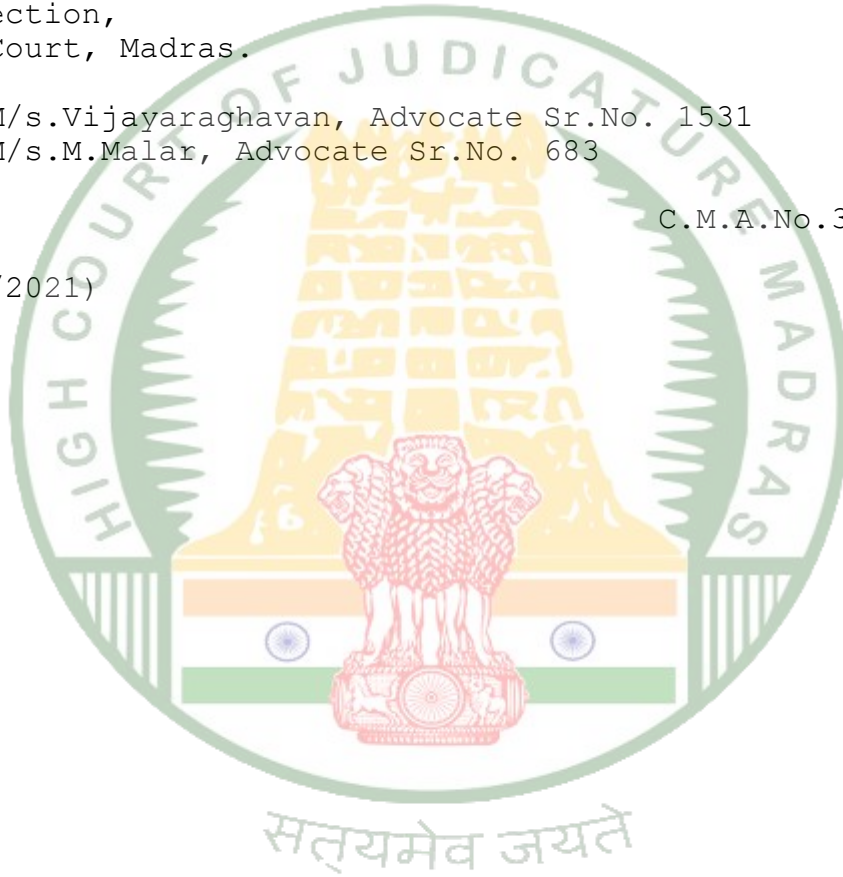
1. The Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruvannamalai.

Copy To:
The Section Officer,
V.R.Section,
High Court, Madras.

+1 cc to M/s.Vijayaraghavan, Advocate Sr.No. 1531
+1 cc to M/s.M.Malar, Advocate Sr.No. 683

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PPA (CO)
RMP (05/05/2021)



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