

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.01.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3187 of 2013

R. Sebastin

...Appellant

Vs

1.P. Selvaraj

2.The United Insurance Company Ltd.,
No.38, Anna Salai, Chennai 600 002.

.... Respondents

PRAYER: Civil Miscellaneous Appeal filed to set aside the award passed in M.C.O.P.No.4206 of 2002 dated 16.02.2010 by the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court - III, Chennai and enhance the award amount.

For appellant : Mr.D. Selvaraj
For respondent-1 : Ex-parte
For Respondent-2 : Mr.C. Paranthaman

J U D G M E N T

This appeal has been filed by the appellant/claimant seeking enhancement of the compensation awarded in M.C.O.P.No.4206 of 2002 dated 16.02.2010 by the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court - III, Chennai.

2. The appellant is the claimant. First and second respondents are the owner and insurer of the offending vehicle.

3. It is the case of the appellant that on 22.08.2001 at about 5:30 a.m when he was walking from North to South, near Padalur bus stand at Perambalur a Mahindra van bearing Registration No.TN-45-H-1899 came in a rash and negligent manner behind the appellant and knocked him. As a result of which the appellant sustained injuries. The accident occurred only due to the rash and negligent act of the driver of the van. Hence, the appellant filed a claim petition before the Tribunal, seeking compensation of Rs.2,00,000/- and the Tribunal considering the

materials available on record awarded Rs.23,000/- as compensation with 9% interest from the date of petition till the date of realization.

4. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come forward with this appeal before this Court.

5. In order to prove the claim before the Tribunal, on the side of the appellant three witnesses were examined viz., P.W.1 to P.W.3 and 17 documents viz., Ex.P1 to Ex.P17 were marked. On the side of the respondent, one witness was examined and two documents were marked.

6. The appellant has filed a claim petition, wherein it has been stated that the appellant sustained Fracture of Zygomatic arch Left side Tenderness in Left Temporal, Abrasion in Left shoulder, Abrasion in Left chest and multiple injuries all over the body. He was working as manager in a private Transport Company and thereby earning Rs. 12,000/- per month. Due to the injuries sustained in the accident, he was not able to continue his job as before. Hence, he prayed to award Rs.2,00,000/- as compensation under several heads.

7. The respondent/Insurance Company also resisted the claim and also filed a counter affidavit, wherein it was averred that the police treated the complaint filed by the appellant as "Mistake of Fact" and it has also been stated that the driver of the offending vehicle does not possess valid driving license at the time of accident, whereas the insured cannot get the benefits of the policy, if the driver of the vehicle does not possess valid driving licence at the time of accident. Hence, there is a violation of policy.

8. On a perusal of the order passed the Tribunal, with regard to negligence aspect i.e whose rash and negligence was responsible for the accident? was disputed before the Tribunal. The Appellant was examined as P.W.1 and he had deposed that when he was walking on the road a Mahindra van came behind him and knocked him. To substantiate the said contention the appellant also produced a copy of FIR as Ex.P.1 and Accident Register copy as Ex.P.2. The first respondent/owner of the offending vehicle has not disputed the contention of the claimant and remained Ex.Parte. Hence the Tribunal, relying upon the above evidence arrived at a conclusion that the driver of the bus is the cause for the accident. To controvert the same, no new facts or grounds are forth coming by the respondents. Hence, this Court is not inclined to interfere with the findings rendered on the negligence aspect and the same is confirmed as such.

9. With regard to quantum, on the basis of Exs.P.4 and 8/Discharge summary and O.P.chits the Tribunal has awarded Rs.7,000/- and Rs.5,000/- under the head medical expenses and mental agony . On the basis of oral evidence adduced by P.W.3/Doctor K.J. Mathizhagan, that the appellant was unable to speak freely and he is having head ache and not able to lift any articles hence the Tribunal has awarded Rs.10,000/- as compensation under the head loss of earning power. Thus, in toto the Tribunal has awarded a sum of Rs.23,000/- as compensation.

10. In view of the above this Court observed that no amount was awarded towards disability. Hence, Rs.10,000/- is awarded towards Disability. Considering the avocation and the injuries sustained by the appellant, the head loss of earning power is enhanced to Rs.15,000/- from Rs.10,000/- Thus, the award passed by this Court is as follows:

S.No.	Amount awarded by the Tribunal	Amount awarded by this Court
Medical Expenses	Rs.7,000/-	Rs.7,000/-
Transportation	Rs.1,000/-	Rs.1,000/-
Pain and suffering	Rs.5,000/-	Rs.5,000/-
Loss of earning power	Rs.10,000/-	Rs.15,000/-
Permanent Disability	-Nil-	Rs.10,000/-
Loss of amenities	-Nil-	Rs.2,000/-
Total	Rs.23,000/-	Rs.40,000/-

11. With the above said modification the award amount is enhanced to Rs.40,000/- from Rs.23,000/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed. The second respondent-Insurance Company is directed to deposit the amount awarded by this Court along with interest at the rate of 7.5% p.a from the date of petition till the date of realization, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made the appellant is permitted to withdraw the enhanced award amount, less the amount if any, already withdrawn. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
Fast Additional District and Sessions Court and
Track Court No.III, Chennai.

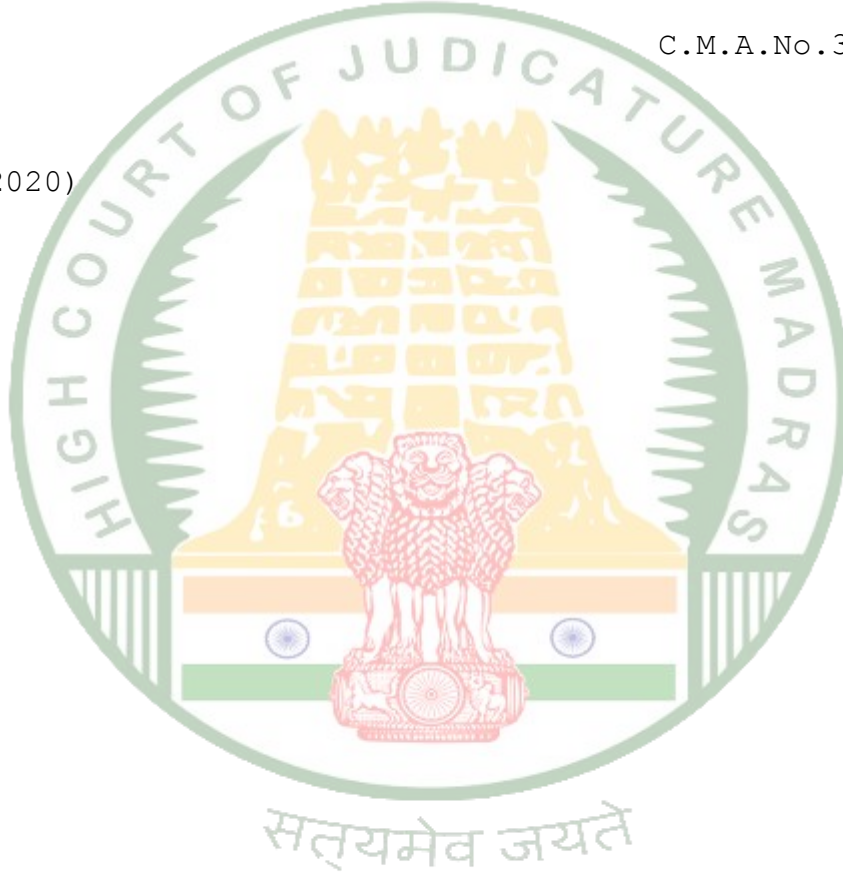
2.The Section Officer
VR Section
High Court, Madras 104.

+1 Cc to Mr.P.D. Selvaraj, Advocate sr 7914

+1 Cc to Mr.C. Paranthaman, Advocate sr 7824.

C.M.A.No.3187 of 2013

SPD(CO)
SP(10/11/2020)



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