

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

C O R A M

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.3482 OF 2013

Thiru.Manivannan

... Appellant/Petitioner

Vs

1. Faithful Engineers Pvt Ltd.,
No.84/17, Five Parlong Road,
Maduvankarai, Guindy,
Chennai-600 032.

2. Oriental Insurance Company Limited,
No.8, Esplanade Road,
Chennai-600 108.

... Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the order made in M.A.C.T.O.P.No.3199 of 2006 dated 21.09.2010 on the file of the II Court Of Small Causes, Motor Accident Claims Tribunal, Chennai.

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

For Respondents: Mr.M.Krishnamoorthy
for R2

सत्यमेव जयते : R1-Ex parte

J U D G M E N T

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This Civil Miscellaneous Appeal has been filed against the award dated 21.09.2010 made in M.A.C.T.O.P.No.3199 of 2006 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2. The appellant herein is the claimant in M.C.O.P.No.3199 of 2006 on the file of the Motor Accident Claims Tribunal. He filed the above claim petition claiming a sum of Rs.10,00,000/-

as compensation for the injuries sustained by him, in the accident that took place on 18.06.2005.

3. On 18.06.2005 at about 04.30 pm, when the appellant was riding his Tri-cycle at 100 feet road, Ashok Nagar in front of Saraswathi Furniture, a van bearing Regn.No.TN-09-AJ-7833 driven by its driver in a rash and negligent manner, hit the appellant. Due to the said incident, the appellant sustained grievous injuries.

4. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the van belonging to the first respondent and directed the second respondent to pay a sum of Rs.2,83,000/- as compensation to the claimant.

5. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6. The learned counsel for the appellant would submit that the Court below failed to consider the evidence of P.W.1 and P.W.2/the Doctor and the documents marked through them and awarded only Rs.2,83,000/- as compensation, without considering the nature of injuries of the injured. The injured had sustained fractures of both thigh, hip and laceration all over the body. The Court below ought to awarded more under the head of pain and sufferings, but only a sum of Rs.25,000/- was awarded towards the same. Further, the tribunal ought to awarded more than Rs.50,000/- for permanent disability sustained by the injured. P.W.2/the Doctor assessed the disability as 70%, whereas the Tribunal without contra evidence reduced the disability to 50% and awarded only Rs.50,000/-. The Court below has not awarded any amount under the head of damages to cloth and articles of the injured. The Court below has awarded a meager amount in all the heads. Hence, the learned counsel for the appellant prays to enhance the amount awarded by the tribunal.

7. The learned counsel for the second respondent would submit that the claim petition filed by the claimant for claim of compensation is devoid of merits and facts. This appeal is not maintainable in law and on facts and it is liable to be dismissed. Further, he would submit that the driver has not drove the van in a rash and negligent manner at the time of accident and the respondent cannot be held liable to pay the compensation. Hence, he prayed to dismiss the appeal.

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

9. It is seen that the appellant was earning Rs.2,500/- per month, but, he has not produced any documents to prove his income. Even without any evidence, the Tribunal has fixed the notional income of the appellant at Rs.3,000/- per month, by considering the nature of injury and also the treatment period and awarded a total sum of Rs.9,000/- (3,000 x 3) towards "loss of income during treatment". Considering the nature of treatment of treatment, the tribunal has held that the appellant cannot be earning for a minimum period of three months. He can earn Rs.1,500/- per month in a job which requires meager man power. Hence, the loss of income is only Rs.1,500/-. 1/3rd deduction for his personal expenses is Rs.500/-. After the deduction, the loss of earning power is Rs.1,000/-. The appellant was aged about 19 years at the time of accident. As per the second schedule of M.V.Act, the proper multiplier would be 16. Hence, his future loss of income or earning power would come to Rs.1,92,000/- (1000 X 12 X 16). The amounts awarded under various heads are just and reasonable. Hence, this Court is not inclined to interfere with the same and they are all confirmed. Therefore, the compensation awarded by the Court below reads as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent Disability	50,000/-	50,000/-	Confirmed
2.	Loss of income during Treatment	9,000/-	9,000/-	Confirmed
3	Transport Charges	1,000/-	1,000/-	Confirmed
4.	Extra Nourishment	5,000/-	5,000/-	Confirmed
5.	Medical Expenses	1,000/-	1,000/-	confirmed
6.	Pain and sufferings	25,000/-	25,000/-	confirmed
7.	Future Loss of earning power	1,92,000/-	1,92,000/-	confirmed
	Total	Rs.2,83,000/-	Rs.2,83,000/-	Confirmed

10. In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sbn

To

1. The II Judge,
The Motor Accident Claims Tribunal,
Court Of Small Causes,
Motor Accident Claims Tribunal,
Chennai.
2. The Section Officer,
VR Section,
High Court of Madras.

+1cc to Mrs.M.Malar, Advocate, S.R.No.15434

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.15391

C.M.A.No.3482 of 2013

SVI (CO)
CS/09/02/2021



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