

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3533 of 2013

Manoharan

... Appellant

Vs.

1. Anchor Road Construction,
Old No.5, New No.9, Gandhi Street,
Shenoy Nagar,
Chennai - 600 030.

2. The National Insurance Company Limited,
C-32, 2nd Floor, 2nd Avenue,
Thirumangalam, Anna Nagar,
Chennai - 600 040.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 25.11.2011 made in M.A.C.T.O.P.No.2489 of 2008 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellant : Mr.F.Terry Chellaraja

For R2 : Mr.S.Arunkumar
R1 - Exparte

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 25.11.2011 made in M.A.C.T.O.P.No.2489 of 2008 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

2. The case of the appellant is that on 27.02.2008 at about 6.30 p.m., the appellant was traveling as pillion rider in motorcycle bearing Registration No.TN-22-U-4045 from Kolappam to Vandalur at Kelambakkam Vandalur Road opposite to Tamilnadu Forest. At that time, the first respondent's lorry bearing Registration No.TN-02-U-2223 driven by its driver in a rash and negligent manner dashed behind the appellant. As a result, the appellant sustained grievous injuries and immediately he was admitted for treatment in Government Hospital, Chrompet. At the time of accident, he was aged 31 years, and before the accident, he was a welding and plumbing

contractor in Super Auto Company, Kolapakkam and was earning Rs.12,000/- per month. Due to the injuries sustained in the accident, he became permanently disabled. Hence he filed a petition before the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai, claiming Rs.2,00,000/- as compensation under various heads.

3. The second respondent insurance company filed a counter affidavit before the Tribunal stating that the accident had occurred only due to the rash and negligent riding of the rider of the motorcycle and there was no fault on the part of the first respondent's driver. Further, it has been stated that the driver of the first respondent had no valid driving licence at the time of accident. Hence they are not liable for the claim. Moreover, it has been stated that the alleged age, occupation and income of the appellant are not true and the amount of compensation claimed is highly excessive.

4. During the trial, on the side of the appellant, one Mrs.Janaki was examined as PW1, the appellant was examined as PW2, one Dr.M.Saravanabhavanantham was examined as PW3, one Mr.Kalidoss was examined as PW4 and Exs.P1 to P12 were marked. On the side of the respondents, neither any witness was examined nor any document was marked.

5. The Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the appellant and awarded Rs.32,000/- as compensation as stated below :

S.No.	Description	Amount
1.	Loss of Earning	2,000
2.	Transport	2,000
3.	Extra Nourishment	2,000
4.	Damages to Cloth and Articles	1,000
5.	Pain and Suffering	5,000
6.	Disability	20,000
	Total	32,000

6. Aggrieved by the award, the appellant has filed this appeal before this Court stating that the Tribunal has erred in fixing the compensation.

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

8. On perusal of the award dated 25.11.2011 passed by the

Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai, it is observed that the appellant has examined himself as PW2 and deposed that he sustained fracture on his left foot and multiple injuries all over the body, and due to which, he was unable to work as before. To prove the same, he examined one doctor, namely, M.Saravanabhavanantham as PW3 and marked Wound certificate as Ex.P6 before the Tribunal. But in spite of the same, the Tribunal has awarded only Rs.20,000/- under the head of disability, and this Court is inclined to enhance the same as Rs.40,000/-. Further, it is observed that the appellant has marked Work order (Ex.P8) and copy of his Bank pass book (Ex.P7) to prove his income, but the Tribunal without considering the same has awarded only Rs.2,000/- under the head of loss of earning, and this Court is inclined to enhance the same as Rs.12,000/-. Moreover, it is observed that the Tribunal has not awarded any amount for Attender's Charge. During the period of treatment, the appellant definitely would have spent some amount for Attender. Considering the same, this Court is inclined to award Rs.5,000/- under the said head. The sum awarded under the other heads i.e. Rs.2,000/- each for Transport and Extra Nourishment, Rs.1,000/- for Damages to Cloth and Articles, and Rs.5,000/- for Pain and Sufferings, is reasonably awarded by the Tribunal, hence the same is hereby confirmed.

9. In view of the observations made by this Court, the compensation awarded by the Tribunal is modified as follows :

S.No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Loss of Earning	2,000	12,000	Enhanced
2.	Transport	2,000	2,000	Confirmed
3.	Extra Nourishment	2,000	2,000	Confirmed
4.	Damages to Cloth and Articles	1,000	1,000	Confirmed
5.	Pain and Suffering	5,000	5,000	Confirmed
6.	Disability	20,000	40,000	Enhanced
7.	Attender	-	5,000	Granted
	Total	32,000	67,000	Enhanced by 35,000

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the second respondent is directed to deposit the said amount of Rs.67,000/- with interest at the rate of 7.5% per annum from the date of petition till the date

of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the same by filing a formal petition before the concerned Court, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

raja

To

1. The Motor Accident Claims Tribunal,
Chief Judge, Small Causes Court,
Chennai.

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

+1cc to Mr.M.Malar, Advocate, S.R.No. 18105

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No. 17851

C.M.A.No.3533 of 2013

SSV(CO)
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