

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3551 of 2013

Mekala

.. Appellant/Petitioners

Vs.

1. A. Raghunath
(First respondents was set exparty in the Trial Court)

2. ICICI Lombard General Insurance Co., Ltd.,
Chottabhai Centre No. 140, 2nd & 3rd Floor,
Nungambakkam High Road,
Chennai 34. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 14.03.2012 made in M.A.C.T.O.P.No. 3441 of 2008 on the file of III Judge before the Motor Accident Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mr.K.V. Muthu Visakan

For Respondent-2 : Mrs.R. Sreevidhya

R1 : Exparte

JUDGMENT

The Civil Miscellaneous Appeal is filed against the Judgment and Decree dated 14.03.2012 made in M.A.C.T.O.P.No. 3441 of 2008 on the file of III Judge before the Motor Accident Claims Tribunal (Court of Small Causes), Chennai.

2.The case of the claimant/appellant is that on 19.08.2008 at 13.00 hours, when she was walking at Franson Thottam Street, Opposite plot No.22, Kellys, Chennai the first respondent's JCB bearing Registration No.TN-20-AH-4492 was digging the road and the driver suddenly turned the JCB in a rash and negligent manner and knocked the appellant. Due to the impact the appellant sustained grievous injuries. Therefore, he

filed a claim petition before the Tribunal seeking Rs.6,00,000/- as compensation for the injuries sustained in the accident.

3.The Tribunal after analyzing the materials available on record fixed the negligence on the part of the driver of the JCB and awarded Rs.1,82,000/- as compensation.

4.Not being satisfied with the award passed by the Tribunal, the appellant has come up with this present appeal.

5.The learned counsel for the appellant submitted that due to the accident the appellant sustained severe injury in chest and multiple ribs fracture in left side and Haemopneumthorax in chest and fracture in both fore arm in left hand and multiple injuries all over the body. She was working as a House keeper in Spice Fashion and thereby earning Rs.5,000/- per month. But, the Tribunal has not considered the said aspect and awarded meager amount as compensation towards the head loss of income. However, the amount awarded by the Tribunal is very low and prays to enhance the compensation.

6.The learned Counsel for the second respondent would contend that the injuries sustained by the appellant are very simple in nature and the appellant exaggerated the same as permanent disability to claim huge amount as compensation. In any event the Tribunal has awarded huge amount as compensation.

7.Heard the learned counsel for the appellant and the respondents and perused the materials available on record.

8.With regard to negligence aspect P.W.1/appellant deposed before the Tribunal, that the accident occurred due to the negligence on the part of the driver of the first respondent's vehicle. Ex.P.1/F.I.R supports the case of the claimant. There is no contra evidence against the evidence of P.W.1, which remains unchallenged. Hence, the Tribunal concluded that the negligence exists on the part of the driver of the first respondent's vehicle. Hence, this Court is not inclined to interfere with the same and the same is confirmed as such.

9.With regard to quantum of compensation arrived by the Tribunal, Ex.P.5/Salary certificate reveals the appellant was earning Rs.5,000/- per month. Due to the accident he may not be able to go for job for atleast 4 months. Hence, Rs.20,000/- (Rs.5,000 x 4) was awarded under the head loss of earnings. Based on Ex.P.3/Medical bills Rs.36,000/- and Rs.15,000/- was awarded under the head Medical expenses and pain and sufferings. P.W.2/Dr.Sai Chandran examined the injured and assessed that the injured sustained 50% disability. Taking note of the same and determined Rs.2,000/- per percentage and awarded Rs.1,00,000/- (50% x Rs.2,000) under the head partial permanent disability.

Considering the age, nature of injuries, inpatient treatment for 12 days, the Tribunal has awarded Rs.5,000/- each towards Transport to Hospital and Extra nourishment and Rs.1,000/- towards Damage to cloths. Thus, in toto awarded Rs.1,82,000/- as total compensation for the injured.

10. In view of the above considering the avocation of the injured this Court is inclined to take Rs.5,000/- as monthly income of the injured and due to the accident she may not be able to go for job for atleast 6 months. Hence, Rs.30,000/- is awarded under the head loss of income. Considering the nature of injuries sustained by the appellant the amount awarded under the head pain and sufferings is enhanced to Rs.25,000/- from Rs.15,000/-. Taking note Ex.P.2/discharge summary which reveals that the appellant was treated as in-patient for 12 days the amount awarded under head Extra nourishment and Transport is enhanced to Rs.10,000/- each. This Court observed that the Tribunal has not awarded any amount towards the head attender charges and loss of amenities. Hence, Rs.5,000/-each is awarded towards the same. The amount awarded by this Court is tabulated hereunder. Except the said modification the amount awarded under all the other head stand confirmed.

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of income for 4 and 6 months	20,000/-	30,000/-
2.	Transportation	5,000/-	10,000/-
3.	Extra nourishment	5,000/-	10,000/-
4.	Damage to clothes	1,000/-	1,000/-
5.	Medical Expenses	36,000/-	36,000/-
6.	Pain and sufferings	15,000/-	25,000/-
7	Disability of 50% at the rate of Rs.2,000/- per percentage	1,00,000/-	1,00,000/-
8	Attender charges	-Nil-	5,000/-
9	Loss of amenities	-Nil-	5,000/-
	Total	Rs.1,82,000/-	Rs.2,22,000/-

11. Thus, the award amount is enhanced to Rs.2,22,000/- from Rs.1,82,000/-

12. In the result this appeal is partly allowed and the rate of interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed. The second respondent/Insurance Company is directed to deposit the amount awarded by this Court, deduct the

amount, if any already deposited, within a period of 8 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 entire award amount along with interest and costs, less the amount already withdrawn. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

2.The Section Officer,
V.R Section, High Court,
Madras.

+1cc to Mr.K.V.Muthu Visakan, Advocate, S.R.No. 14957

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 15326

C.M.A.No.3551 of 2013

SJ(CO)
GN(10/12/2020)

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