

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.3703 of 2013
and M.P.No.1 of 2013 and
Cros.Obj.No.3 of 2016

C.M.A.No.3703 of 2013

The New India Assurance Company Ltd.,
46, Armenian Street,
Chennai - 1. Appellant/2nd Respondent

Vs.

1. V.Edward1st Respondent/Claimant

2. A.Badrunisa 2nd Respondent/1st Respondent

Cros.Obj.No.3 of 2016

V.Edward Cross objector /Claimant

Vs.

1. The New India Assurance Company Ltd.,
No.46, Armenian Street,
Chennai - 600 001.1st Respondent/2nd Respondent

2. A.Badrunisa 2nd Respondent/1st Respondent

Prayer in C.M.A.No.3703 of 2013 : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 06.03.2013 made in M.C.O.P.No.4034 of 2011 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

Prayer in Cross.Obj.No.3 of 2016 : Cross Objection is filed under Order XXXXI, Rule 22 of C.P.C., against the Judgment and Decree dated 06.03.2013 made in M.A.C.T.O.P.No.4034 of 2011 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant in
C.M.A.No.3703 of 2013
and for R1 in : Mr.N.Anand
Cross.Obj.No.3 of 2016

For R1 in
C.M.A.No.3703 of 2013
and for Appellant in : Mr.P.Chinnaraj
Cross.Obj.No.3 of 2016

R2 - Served- Name Printed
No Appearance

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 06.03.2013 made in M.A.C.T.O.P.No.4034 of 2011 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2. The case of the appellant is that on 26.04.2011 at 3.00 p.m., while the first respondent, namely, V.Edward, was riding a motorcycle bearing Registration No.TN-05-AB-9538 in Madavaram High Road from North to South near Moovar Statue, the second respondent's motorcycle bearing Registration No.TN-01-AK-8563 driven by one John Basha in a rash and negligent manner hit against the first respondent's motorcycle. As a result, the first respondent had sustained fracture of right leg and multiple injuries all over the body, and immediately he was admitted for treatment in Sen Hospital, Chennai. At the time of accident, he was aged 38, and before the accident, he was a Sales Supervisor in KTV Health Food Private Limited and was earning Rs.15,000/- 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, III Small Causes Court, Chennai, claiming Rs.4,00,000/- as compensation under various heads.

3. Denying the allegations, the appellant who is the insurer of the second respondent's motorcycle filed a counter affidavit before the Tribunal stating that if the first respondent would have driven the vehicle carefully, he would have avoided the accident. But he did not do so. Hence, he is also responsible for the alleged accident. Further, it has been stated that the rider of the second respondent's motorcycle was not holding valid driving license and the motorcycle of the second respondent was not insured with them at the time of accident. Moreover, it has been stated that the alleged disability, age, occupation and income of the first respondent are not true and the amount of compensation claimed is highly excessive.

4. During the trial, on the side of the first respondent, the first respondent was examined as PW1, one Dr.Thiagarajan was examined as PW2 and Exs.P1 to P10 were marked. On the side of the appellant, neither any witness was examined nor any document was marked.

5. The Motor Accident Claims Tribunal, III Small Causes Court, Chennai, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the first respondent and awarded compensation for a sum of Rs.1,52,030/- as stated below :

S.No.	Description	Amount
1.	Loss of Income	24,000
2.	Transport to Hospital	3,000
3.	Extra Nourishment	5,000
4.	Damage to Clothes	1,000
5.	Medical Expenses	14,030
6.	Pain and Sufferings	25,000
7.	Permanent disability	80,000
	Total	1,52,030

6. Aggrieved by the award, the appellant insurance company has filed this appeal before this Court stating that the Tribunal has erred in fixing the compensation for the injuries sustained by the first respondent.

7. The first respondent has filed a Cross Objection against the award of the Tribunal stating that the Tribunal went wrong in fixing the compensation at Rs.1,52,030/- as against the claim of Rs.4,00,000/-.

8. Heard the learned counsel for the appellant and the learned counsel for the first respondent, and perused the materials available on record.

9. On perusal of the award dated 06.03.2013 passed by the Motor Accident Claims Tribunal, III Small Causes Court, Chennai, it is observed that the first respondent in order to prove that the second respondent's driver was the cause for the alleged accident marked Ex.P1 FIR copy which was filed against the second respondent's driver, but on the appellant's side, there was no document filed to disprove the evidence of the first respondent, therefore, the Tribunal has come to the conclusion

that the accident had happened due to the rash and negligent driving of the second respondent's driver. Further, it is observed that the appellant has not placed any material to establish their contention that the driver of the second respondent had no valid driving licence at the time of accident, therefore, the Tribunal has held that the appellant was liable to compensate the first respondent/claimant.

10. As far as the quantum of compensation is concerned, it is observed that the first respondent has marked his Pay slip (Ex.P7) to prove his avocation and income. The Tribunal only after perusing the same has fixed his income at Rs.8,000/- per month. In the OP chit marked as Ex.P3, the age of the first respondent was found to be 38, therefore, the Tribunal has fixed the same as his age. Further, it is observed that the first respondent had suffered abrasion at right leg and laceration at right foot and forearm due to the injuries sustained in the accident. The Tribunal only considering the same has awarded Rs.24,000/- for Loss of income and Rs.25,000/- for Pain and Sufferings.

11. It is also observed that the PW3 Dr.Thiagarajan had assessed the disability at 55%. The disability certificate issued by him has also been marked as Ex.P10. But the first respondent has stated in his proof affidavit that he had taken treatment only as outpatient on 26.04.2013, therefore, the Tribunal reduced the disability at 40% and awarded Rs.80,000/- i.e. Rs.2,000/- per percentage of disability towards permanent disability. The sum awarded under the heads of Transport and Extra Nourishment is found to be meager, hence the same is hereby enhanced at Rs.5,000/- for Transport and Rs.7,500/- for Extra Nourishment. The Attender Charge has not been awarded by the Tribunal, hence a sum of Rs.10,000/- is hereby awarded under the said head as the first respondent would have spent some amount for attender during the period of treatment. The sum of Rs.14,030/- awarded under the head of Medical Expenses was only based on the Medical bills (Ex.P6) marked by the first respondent. Hence, the same is confirmed. The sum of Rs.1,000/- awarded under the head of Damage to Clothes is found to be reasonable. Hence, the same is also confirmed.

12. 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 Income	24,000	24,000	Confirmed
2.	Transport to Hospital	3,000	5,000	Enhanced
3.	Extra Nourishment	5,000	7,500	Enhanced
4.	Damage to Clothes	1,000	1,000	Confirmed
5.	Medical Expenses	14,030	14,030	Confirmed
6.	Pain and Sufferings	25,000	25,000	Confirmed
7.	Permanent disability	80,000	80,000	Confirmed
8.	Attender's Charge	10,000	10,000	Granted
	Total	1,52,030	1,66,530	Enhanced by 14,500

13. Accordingly, this Civil Miscellaneous Appeal is dismissed and the appellant is directed to deposit the said amount of Rs.1,66,530/- 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 first respondent/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. Consequently, the Cross Objection filed by the first respondent is partly allowed and the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
III Small Causes Court,
Chennai.
2. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.N.Anand, Advocate Sr.18195

C.M.A.No.3703 of 2013
and M.P.No.1 of 2013 and
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vba[co]
srg 17/09/2020



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