

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3719 of 2013

Dhuraipandian

... Appellant/Claimant

Vs.

1. V.Chandran

2. Bajaj Alliance General Insurance Co. Ltd.,
25/26, Prince Tower, IV Floor,
College Road, Nungambakkam,
Chennai - 600 002. ... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 05.07.2013 made in M.A.C.T.O.P.No.916 of 2012 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.M.Malar

For R2 : Mrs.K.Poomalai

R1 - Exparte

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 05.07.2013 made in M.A.C.T.O.P.No.916 of 2012 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2. The case of the appellant is that on 27.06.2011 at about 4.00 p.m., the appellant was riding his Tricycle at GST Road, Thailavaram. At that time, the first respondent's Omni Van bearing Registration No.TN-19-3456 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 SRM Hospital, Potheri. At the time of accident, he was aged 38, and before the accident, he was doing a business and was earning Rs.10,000/-

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, IV Small Causes Court, Chennai, claiming Rs.6,00,000/- as compensation under various heads.

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

4. During the trial, on the side of the appellant, the appellant was examined as PW1, one Dr.N.Saichandran was examined as PW2 and Exs.P1 to P10 were marked. On the side of the respondents, one Mr.S.Baskaran was examined as RW1, one Mr.R.Gandhi was examined as RW2 and Exs.R1 to R7 were marked.

5. The Motor Accident Claims Tribunal, IV Small Causes Court, Chennai, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the appellant and awarded Rs.1,58,000/- as compensation as stated below :

S.No.	Description	Amount
1.	Loss of Earning	16,000
2.	Transport to Hospital	7,000
3.	Extra Nourishment	7,000
4.	Damages to Vehicle	10,000
5.	Medical Expenses	2,920
6.	Pain and Sufferings	25,000
7.	Disability of 45% @ Rs.2,000/- per percentage	90,000
	Total	1,57,920 rounded off to 1,58,000

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

fixing the compensation at Rs.1,58,000/- as against the claim of Rs.6,00,000/-. He has also relied upon various citations in support of his case.

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 05.07.2013 passed by the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai, it is observed that the appellant has not placed any single evidence to prove that he was earning Rs.10,000/- per month before the accident, therefore, his income was notionally fixed at Rs.4,000/- per month. Further, it is observed that the doctor who examined as PW2 deposed that the appellant sustained supracondylar fracture on his right femur, hence, he made a surgery. But in spite of the surgery, he found difficulty in climbing steps and doing work, therefore, he assessed 45% disability. In support of the deposition of PW2, the appellant has marked Ex.P9 X-ray film and Ex.P10 Disability certificate before the Tribunal. The Tribunal only after considering the same has awarded Rs.90,000/- i.e. Rs.2,000/- per percentage for disability and Rs.16,000/- for temporary Loss of Income.

9. It is also observed from the award of the Tribunal that some of the medical bills marked by the appellant were found to be improper at the time of verifying, therefore, the Tribunal has awarded only Rs.2,920/- towards Medical Expenses. Moreover, it is observed that the appellant has produced Ex.P5 damaged vehicle photographs and Ex.P6 vehicle damage quotation to prove the damages caused to his vehicle. The Tribunal only after considering the same has awarded Rs.10,000/- towards Damages to Vehicle. During the period of treatment, the appellant definitely would have spent some amount for Attender. But the Tribunal has awarded compensation only for Transport, Extra Nourishment and Pain and Suffering and has failed to award for the Attender's Charge. Hence, this Court is inclined to award the same. Accordingly, a sum of Rs.5,000/- is hereby awarded for the Attender's Charge.

10. In view of the observations made by this Court, this Court does not find any error in the award passed by the Tribunal except the Attender's Charge awarded by this Court. Hence, this Court is not inclined to interfere with the same. Accordingly, the compensation awarded by the Tribunal is fixed 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	16,000	16,000	Confirmed
2.	Transport to Hospital	7,000	7,000	Confirmed
3.	Extra Nourishment	7,000	7,000	Confirmed
4.	Damages to Vehicle	10,000	10,000	Confirmed
5.	Medical Expenses	2,920	2,920	Confirmed
6.	Pain and Sufferings	25,000	25,000	Confirmed
7.	Attender's Charge	-	5,000	Granted
8.	Disability of 45% @ Rs.2,000/- per percentage	90,000	90,000	Confirmed
	Total	1,57,920 rounded off to 1,58,000	1,62,920 rounded off to 1,63,000	Enhanced by 5,000

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the second respondent is directed to deposit the said amount of Rs.1,63,000/- 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 with liberty to recover the same from the first respondent. 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.

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-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

raja

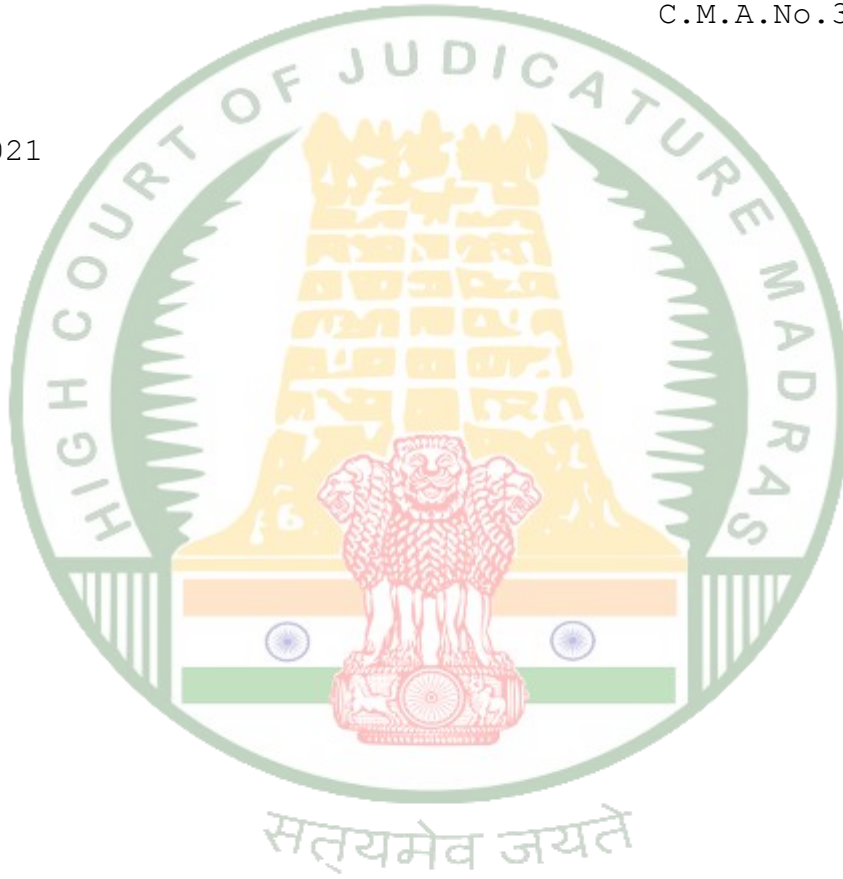
To

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

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

C.M.A.No.3719 of 2013

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