

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.08.2020

PRONOUNCED ON : 17.08.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.NO.2513 OF 2016

M.Akbar Ali (Minor)

rep.by M&N Mumtaz

No.1/293, II Street, Aringar,

Anna Nagar, Neelankarai,

Chennai-41.

... Appellant/Petitioner

/versus/

1.M.Durailingam

2.Reliance General Insurance Co.Ltd.,

No.6, Haddows Road, 6th Floor,

Chennai 600 006.

... Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal has been filed under Section 173 of M.V.Act, 1988, against the judgment and decree in M.C.O.P.No.1875/2011 dated 20.02.2015 on the file of the V Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant :Mr.K.A.Ravindran for
Mr.A.Shanmugaraj

For R1 :Exparte

For R2 :Mr.S.Arunkumar

J U D G M E N T
(The case has been heard through video conference)

On 11/01/2011 at about 4:30 PM while the claimant Akbar Ali was crossing the ECR road opposite to University Nagar, Palavakkam, he was hit by a van bearing registration number TN 22 AY 1031 which came rash and negligently. In the said accident, Akbar Ali sustained head injury, fracture of right

wrist, fracture of right ankle and multiple injuries all over the body. For the injury sustained, a sum of Rs.2 lakhs was sought as compensation under Section 163 A of the Motor Vehicles Act, 1988.

2.The insurance company filed a counter stating that the driver of the offending vehicle had no valid licence to drive goods vehicle. The vehicle was not driven rash and negligently. The accident has occurred only due to the fault of the petitioner. The claim of Rs.2 lakhs as compensation is fanciful, exaggerated and arbitrary. The claimant has not suffered any permanent disability. He was only 16 years old and there is no proof for his earning capacity or income.

3.Before the Tribunal, two witnesses were examined on the side of the claimant. The mother of the victim and Doctor Thyagarajan were examined as PW-1 and PW-2 respectively. Through them 10 exhibits were marked. The Tribunal after considering the evidence found that the claimant has sustained only simple injuries and not entitled for any compensation under Section 163 A of the Motor Vehicles Act. Having held so, the Tribunal suo moto converted the petition under Section 166 of the Motor Vehicles Act. Considering the First Information Report, the rough sketch and the deposition of PW-1, held that the accident caused due to the negligence of the offending vehicle. Considering the injury sustained, the Tribunal granted Rs.30,000 towards compensation for the extra nourishment, pain and suffering, loss of amenities. It held the owner of the vehicle and the insurer jointly and severally liable to pay the compensation to the injured claimant with interest at the rate of 7.5% per annum from the date of numbering the petition to the date of deposit.

4.The claimant not being satisfied with the award amount has preferred the appeal on the ground that the Tribunal has failed to consider the injuries sustained by the claimant for the fracture in the right wrist and the head injury. 35% disability has been assessed by the PW-2. The discharge summary substantiates the claim that the victim sustained a fracture in the right wrist. Therefore concluding that the victim sustained only simple injury is contrary to evidence leading to miscarriage of justice. The claimant was forced to discontinue his studies due to the accident. Ex P-7 transfer certificate proves the discontinuance of the studies. The award passed by the Tribunal is not just and fair. Therefore, it must to be enhanced.

5.The learned counsel appearing for the insurance company would submit that the witness Dr.Thyagarajan PW-2 is not competent person to speak about the injury or to give disability

certificate. He did not treat the victim. Certificate was given by him after two years from accident. Without examining the x-ray he has given the disability certificate as if the claimant's sustained a fracture injury. Ex.P 10 x-ray does not indicate any fracture. Absence of working sheet along with the disability certificate, rendered rejection of the evidence of PW-2. This witness for right wrist Mobility restrain of 50° , has assessed 35% disability. The said exaggeration been taken note by the tribunal and rightly awarded Rs.30,000 for the pain and suffering, extra nourishment and loss of amenities. No further compensation required in this case.

6. From the pleadings and evidence, the claimant has proved that the accident occurred due to the negligence of the van driver. The second respondent herein is the insurance company under which the van was insured. The insurance was in force at the time of accident. The victim was around 16 years old studying ninth standard. The accident has occurred while he was crossing the ECR road. Though PW-2 has deposed that the claimant right wrist radius bone found fractured and mal-united whereas the Ex.P 10 x-ray shows contrary. The discharge summary Ex P-4 records, aberration in abdomen and right foot. Right closed fracture distal 1/3rd radius. No obvious bony abnormality. Therefore, it is clear from records, the claimant has only suffered mobility constrain and loss of amenity but not permanent disability.

7. From the medical records, taking note of the age, injury sustained, likelihood of expenses incurred for treatment and nourishment, pain and suffering and loss of amenities this Court is of the view that a consolidated sum of Rs.30,000/- is very low and has to be enhanced to Rs.1 lakh which will be fair and just compensation. Accordingly, the compensation is enhanced to Rs.1 lakh with interest at the rate of 7.5% p.a from the date of petition till the date of recovery.

8. In the result, this Civil Miscellaneous Appeal is allowed with costs. The respondent Insurance Company shall deposit the money within eight weeks from today. On such deposit, the claimant shall withdraw the same by filing appropriate application.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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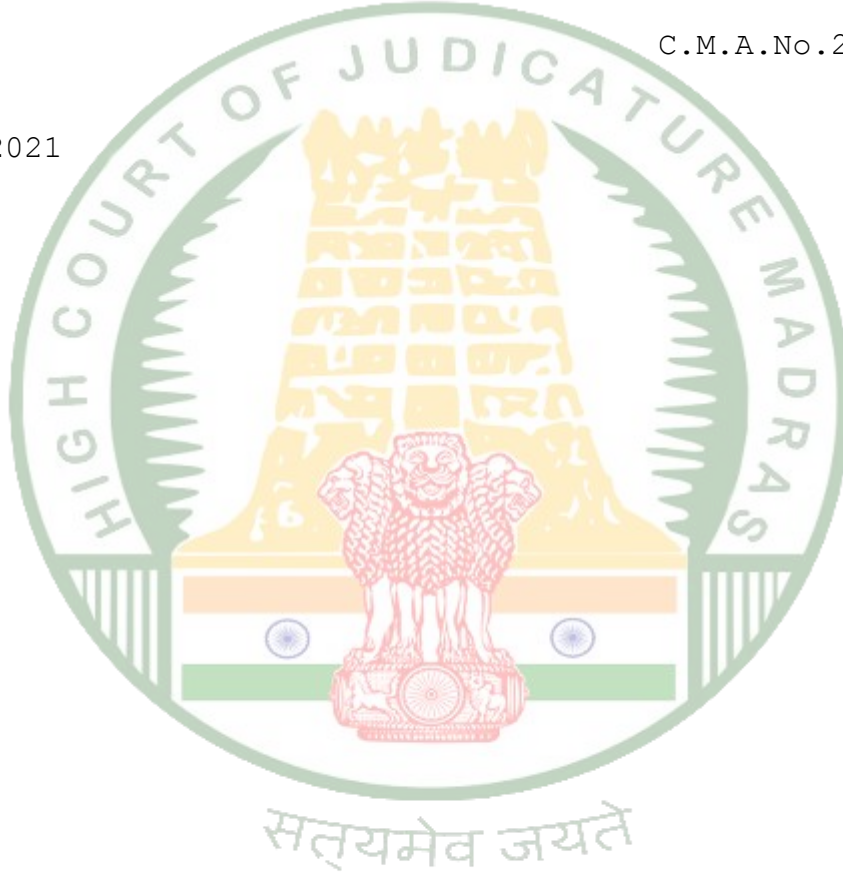
The V Judge, Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

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The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.A.Shanmugaraj, Advocate, S.R.No.26797

C.M.A.No.2513 of 2016

BR(CO)
CS/13/07/2021



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