

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2020

CORAM

THE HON'BLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1908 of 2014

R.Vimala ... Appellant/Petitioner

- Vs -

1.G.M.Sharavanan

[R1 was set exparte before the Tribunal]

2.New India Assurance Company Ltd.,

Motor Third Party Claims Cell,

No.45, Moore Street,

Chennai-600 001.

.... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 25.03.2014 made in MACT.O.P.No.3544 of 2013 on the file of the Motor Accident Claims Tribunal (III Judge, Court of Small Causes), Chennai.

For Appellant : Ms.P.T.Salim Fathima

For Respondents: R1-Exparte

Mr.J.Michael Viswasam

for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant, aggrieved by the order dated 25.03.2014 made in MACT.OP.No.3544 of 2013 by the learned III Judge, Motor Accident Claims Tribunal, (Court of Small Causes), Chennai by raising the following grounds:-

- 1.The Tribunal has erred in deciding the quantum of compensation that was payable to the claimant.
- 2.The Tribunal has erred in taking into account the monthly income of the claimant only at Rs.6,000/- even though it is her categoric evidence that she earned about 7,500/- to Rs.9,000/- per month and also taking the loss of income only for a period of 6 months without taking into account the major injuries sustained by her, who has taken in-patient treatment for about 6 months at repeated

intervals and thus erred in awarded only a sum of Rs.37,500/- towards loss of earning during the treatment period.

3. The Tribunal has erred in awarding lesser sum under the heads of Medical expenses, pain and sufferings and disability.
4. The Tribunal failed to award any amount towards loss of earning power.

2. The case of the appellant is that on 10.06.2013 at about 23.15 hours, while the appellant/claimant was proceeding as a pillion rider in a motor cycle bearing Registration No.TN-05-R-0435 in Gengu Reddy subway from South to North, which took a right turn to go to Poonamallee High Road, at that time, a lorry bearing Registration No.TN-49-AD-9991 was driven by its driver in a rash and negligent manner, dashed against him. Due to the said accident, the claimant sustained grievous injuries and had suffered undisplaced fracture right tibia proximal 1/3rd and filed a claim petition seeking an amount of Rs.9,00,000/- as compensation. The claimant had taken treatment as inpatient at Government KMC Hospital from 11.06.2013 to 03.08.2013 and she had taken continuous treatment in the above hospital. Due to the injuries sustained by her, she was prevented from attending her work to a maximum of six months.

3. A counter statement was filed by the second respondent denying all the averments and had stated that the vehicle in question was not involved in the alleged accident and therefore, they are not liable to pay any compensation. The alleged vehicle has not been properly insured with the second respondent-Insurance company and also the driver of the said vehicle has not been in possession of proper and effective driving licence at that time of accident. Therefore, the second respondent prayed for dismissal of the claim petition.

4. On the side of the claimant, two witnesses have been examined and marked Exs.P1 to P8. On the side of the respondent, no witness has been examined and no exhibit was marked. The Court below, after considering the oral and documentary evidence, has awarded a sum of Rs.2,22,000/- as compensation with 7.5% interest per annum, by judgment dated 25.03.2014. Aggrieved by the said judgment, the claimant preferred the present appeal seeking enhancement of compensation.

5. The learned counsel for the appellant submitted that the appellant/claimant was doing retail business in cut piece clothes and was earning a sum of Rs.7,500/- to Rs.9,000/- per month and after the accident, she was unable to do her work. He would submit that the Court below erroneously awarded a sum of Rs.2,22,000/- when the claim was for Rs.9,00,000/-.

6. The learned counsel for the second respondent would submit that the stand taken by them in the Court below was that involvement of the alleged vehicle has not been insured with the second respondent on the date of accident. He would further submit that the driver of the alleged vehicle has not been in possession of proper driving licence and hence, prayed for dismissal of the claim petition and for reducing the compensation.

7. Heard both sides and perused the entire materials available on record.

8. On going through the materials available on record, the Court below, after considering the various aspects, has come to the conclusion that only due to the rash and negligent act of the driver of the first respondent's vehicle, the accident had occurred and fastened the liability on the respondents 1 and 2. In the absence of any material evidence to show that the vehicle does not possess any valid insurance and driver of the vehicle did not possess proper and valid licence, the Court below, had rightly held that the respondents 1 and 2 are liable to pay compensation as stated above.

9. On going through the entire materials available on record and after considering the plea raised by the appellant, this Court is inclined to modify the amount awarded by the Tribunal towards permanent disability to a sum of Rs.1,20,000/- at the rate of Rs.3,000/- per percentage [40% X 3000]. Regarding the other heads, this Court confirms the amount awarded by the Court below. The final amount of compensation now determined is tabulated below:-

Heads	Amount (Rs.)
Loss of income	36,000
Transport to Hospital	15,000
Extra Nourishment	15,000
Damage to Clothing	1,000
Medical Expenses	15,000
Attender Charges	10,000
Loss of amenities of life	20,000
Pain and Sufferings	30,000
Permanent disability	1,20,000
Total	2,62,000

10. Accordingly, this Civil Miscellaneous Appeal is partly allowed. The second respondent is directed to deposit

Rs.2,62,000/-, less if any amount already deposited, with interest at 7.5% per annum, within a period of eight weeks from the date of receipt of a copy of this order, whereupon, the claimant would be entitled to withdraw same by filing formal petition. No costs.

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

KMI

To

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

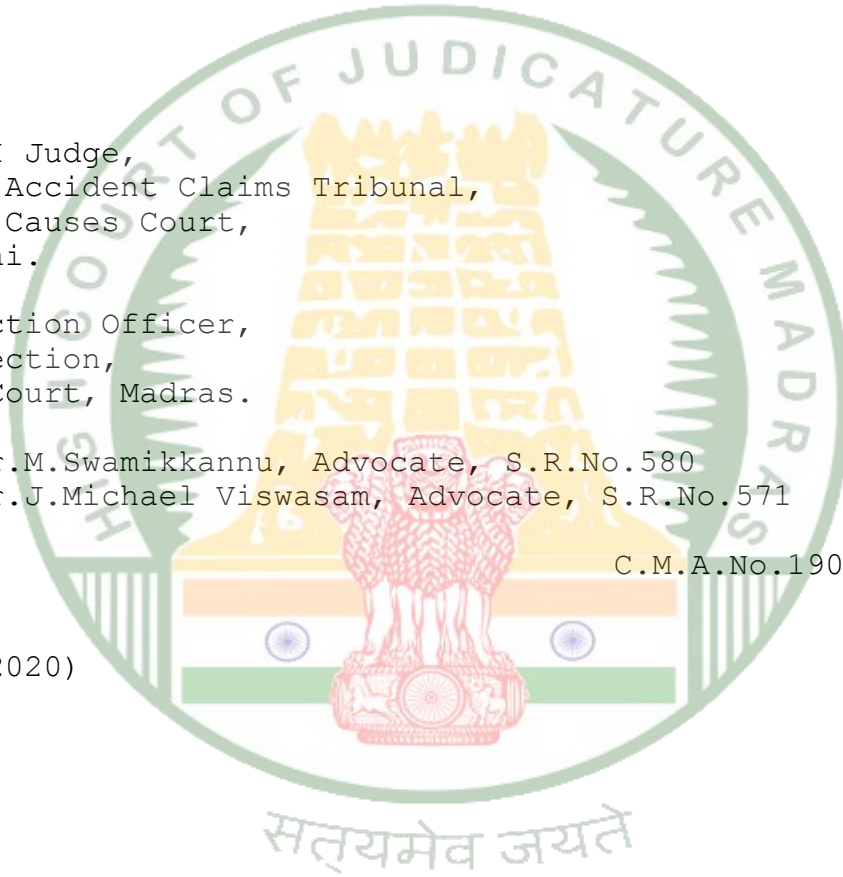
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.M.Swamikkannu, Advocate, S.R.No.580

+1cc to Mr.J.Michael Viswasam, Advocate, S.R.No.571

C.M.A.No.1908 of 2014

SJ(CO)
CB(17/08/2020)



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