

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.41 OF 2014

M.Perumal

... Appellant/Petitioner

Vs.

1. L.Shankari

2. The Oriental Insurance Company Limited,
Third Party Claims Hub,
Oriental House, 2nd Floor,
O.No.115, N.No.216, Prakasam Salai,
Broadway, Chennai. ... Respondents/Respondents

(R1 exparte in Lower Court, hence notice
may be dispensed with)

Prayer:- Civil Miscellaneous Appeal is filed under Section 173
of the Motor Vehicles Act 1988, against the Judgment and Decree
dated 19.08.2013 made in M.C.O.P.No.2616 of 2012 on the file of
the Motor Accident Claims Tribunal, IV Small Causes Court,
Chennai.

For Appellant : Mr.K.Varadha Kamaraj
For R2 : Mr.M.Krishnamoorthy
R1 - Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the
Judgment and Decree dated 19.08.2013 made in M.C.O.P.No.2616 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 13.05.2012 at about
2.00 p.m., the appellant was standing on the left side of the
G.S.T.Road in Urappakkam Tea Shop bus stand. At that time, the
first respondent's motorcycle bearing Registration No.TN-73-9189
driven by one B.Dhanasekar in a rash and negligent manner hit
against the appellant. As a result, the appellant had sustained
grievous injuries and immediately he was admitted for treatment
in Parvathy Ortho Hospital, Chrompet. At the time of accident,
he was aged 55, and before the accident, he was a proprietor in
Perumal Fruit Stall, Karanai Puduchery Road, Urappakkam, 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, IV Small Causes Court, Chennai, claiming Rs.10,00,000/- as compensation under various heads.

3. Denying the allegations, the second respondent who is the insurer of the first respondent's motorcycle filed a counter affidavit before the Tribunal stating that the accident was occurred only due to the negligence of the appellant. Hence they are not liable to pay any compensation to him. Further, it has been stated that the rider of the first respondent was not holding valid driving licence and the motorcycle of the first 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 appellant 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.K.J.Mathiazhagan was examined as PW2 and Exs.P1 to P14 were marked. On the side of the respondents, one Mr.K.Sampath was examined as RW1 and Exs.R1 to R6 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 compensation to a sum of Rs.5,60,503/- rounded off to Rs.5,60,500/- as stated below :

S.No.	Description	Amount
1.	Loss of Earning	15,000
2.	Transport to Hospital	15,000
3.	Extra Nourishment	20,000
4.	Medical Expenses	3,61,503
5.	Pain and Suffering	50,000
6.	Disability of 55% at Rs.1,800/- per percentage	99,000
	Total	5,60,500

6. Aggrieved by the award, the appellant/claimant has filed this appeal before this Court stating that the Tribunal has erred in fixing the compensation at Rs.5,60,500/-.

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 19.08.2013 passed by the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai, it is observed that the appellant in order to prove the disability examined one doctor, namely, K.J.Mathiazhagan, as PW2. He has deposed that due to the accident, the appellant had sustained blunt injury abdomen - caecal perforation with hemiperitoneum and fracture of both bones right leg. Thus he made a surgery. Still he suffered from pain and found difficulty in walking, climbing steps, sitting with folded legs, therefore, he assessed 65% disability. The Tribunal only based on the deposition of the doctor has fixed the disability at 55%. Hence this Court is not inclined to interfere with the same. The sum of Rs.1,800/- awarded per percentage of disability is found to be meager, hence this Court is inclined to enhance it as Rs.3,000/- per percentage. Further, it is observed that the sum of Rs.15,000/- awarded for Transport is very much on the higher side, hence this Court is inclined to reduced it to Rs.10,000/- as the appellant had taken treatment as patient only for 27 days. The sum awarded under the other heads i.e. Rs.15,000/- for Loss of Earning, Rs.20,000/- for Extra Nourishment, Rs.3,61,503/- for Medical Expenses and Rs.50,000 for Pain and suffering, is reasonably awarded by the Tribunal, hence this Court is not inclined to interfere with the same.

9. 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 reduced
1.	Loss of Earning	15,000	15,000	Confirmed
2.	Transport to Hospital	15,000	10,000	Reduced
3.	Extra Nourishment	20,000	20,000	Confirmed
4.	Medical Expenses	3,61,503	3,61,503	Confirmed
5.	Pain and Suffering	50,000	50,000	Confirmed
6.	Disability of 55%	99,000 (1,800 per percentage)	1,65,000 (3,000 per percentage)	Enhanced
	Total	5,60,500	6,21,503 rounded off to 6,21,500	Enhanced by 61,000

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

said amount of Rs.6,21,500/- 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 and 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.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

raja

To

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

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.17836
+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.17820

C.M.A.No.41 of 2014

RJI (CO)
CS/25/01/2021

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