

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.758 OF 2014

Chinnapaiyan

... Appellant/Petitioner

Vs.

1. Manickam

2. The Divisional Manager,
The New India Assurance Co. Limited,
No.42, Big Street, Vasavi Buildings,
Thiruvannamalai.

3. Rajasekar

4. Royal Sundram Alliance Insurance Co. Ltd.,
Sundram Towers,
45, 46, Whites Road,
Chennai.

... Respondents/Respondents

Prayer:-

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 01.07.2011 made in M.A.C.T.O.P.No.477 of 2007 on the file of the Motor Accident Claims Tribunal and Principal Sub Judge, Thiruvannamalai.

For Appellant : Mrs.Subadra
For M/s.M.Malar

For R1 : No Appearance

For R2 : Mr.Neethiperumal

For R4 : Mr.E.Rajadurai
For M/s.M.B.Gopalan Associates

R3 - Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 01.07.2011 made in M.A.C.T.O.P.No.477 of 2007 on the file of the Motor Accident Claims Tribunal and Principal Sub Judge, Thiruvannamalai.

2. The case of the appellant is that on 06.02.2007 at about 2.45 p.m., while the appellant was traveling as a Coolie in the third respondent's lorry bearing Registration No.TN-23-F-3396 from Nadamaganandal Pudur Village towards Vezhanandal, the first respondent's lorry bearing Registration No.TN-28-B-4059 which was driven in a rash and negligent manner dashed against the third respondent's lorry. As a result, the appellant sustained grievous injuries and fracture, and immediately he was admitted for treatment in Thiruvannamalai Government Hospital. At the time of accident, he was aged 30, and before the accident, he was a Coolie in the third respondent's lorry and was earning Rs.6,000/- 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 and Principal Sub Judge, Thiruvannamalai, claiming Rs.5,00,000/- as compensation.

3. Denying the allegations, the second respondent insurance company filed a counter affidavit before the tribunal stating that due to unavoidable circumstances, both the vehicles bearing Registration Nos.TN-23-F-3396 and TN-28-B-4059 dashed against each other and there was no fault on the drivers of both the vehicles. Further, it has been stated that the appellant was not a Coolie, he is unauthorized passenger and he is not entitled to claim any compensation. If at all he is entitled for any compensation, the third and fourth respondents alone are liable to pay to same.

4. The fourth respondent insurance company also filed a counter affidavit denying the allegations stating that the FIR has been filed against the first respondent's driver. Hence they are unnecessary party. Further, it has been stated that the appellant has clearly stated in his petition that the accident was happened only due to the rash and negligent driving of the first respondent's driver. Hence, there was no negligence on the part of the third respondent's driver. Moreover, it has been stated that the alleged age, occupation and income of the appellant is not true and the amount of compensation claimed is highly excessive.

5. During the trial, on the side of the appellant, 7 witnesses were examined as PW1 to PW7 and 21 documents were marked as Exs.P1 to P21. On the side of second respondent, one witness was examined as RW1, but no document was marked.

6. The Tribunal after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the appellant and awarded Rs.1,44,000/- as compensation as follows :

S.No.	Description	Amount
1.	Loss of Income for three months at Rs.3,000/- per month	9,000
2.	Disability	1,00,000
3.	Pain and Suffering	25,000
4.	Transport Expenses	5,000
5.	Extra Nourishment	5,000
	Total	1,44,000

7. Aggrieved by the award, the appellant/claimant has filed this appeal before this Court seeking for enhancement of the compensation.

8. Heard the learned counsel for the appellant and the learned counsel for the respondents 3 & 4, and perused the materials available on record.

9. On perusal of the award dated 01.07.2011 passed by the Motor Accident Claims Tribunal cum Principal Sub Judge, Thiruvannamalai, it is observed that the appellant in order to prove that the first respondent's driver was the cause for the alleged accident marked FIR copy as Ex.P1 which was filed against the first respondent's driver, but the second respondent has not placed any material to disprove the same, and therefore, the Tribunal has come to the conclusion that the accident was occurred only due to the rash and negligent driving of the first respondent's driver. Further, it is observed that since the first respondent's vehicle was insured under the second respondent insurance company on the date of accident, the Tribunal has held that the second respondent is liable to compensate the appellant.

10. As far as quantum of compensation is concerned, this Court is observed that the sum of Rs.25,000/- awarded towards pain and suffering is found to be excessive, hence inclined to reduced it to Rs.20,000/-. Further, this Court is observed that the appellant has not been awarded any compensation towards

Attender Charges. During the period of treatment, somebody would have helped the appellant to carry out his day-to-day activities, and considering the same, this Court is inclined to award Rs.5,000/- for Attender Charges. Insofar as the amount awarded under the other heads, this Court does not find any error, hence inclined to confirm the same.

11. Accordingly, 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 reduced or granted
1.	Loss of Income for three months at Rs.3,000/- per month	9,000	9,000	Confirmed
2.	Disability	1,00,000	1,00,000	Confirmed
3.	Pain and Suffering	25,000	20,000	Reduced
4.	Transport Expenses	5,000	5,000	Confirmed
5.	Extra Nourishment	5,000	5,000	Confirmed
6.	Attender Charges	-	5,000	Granted
	Total	1,44,000	1,44,000	Confirmed

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the second respondent insurance company is directed to deposit the said amount of Rs.1,44,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, 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 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(CCC)

//True Copy//

Sub Assistant Registrar

raja

To

1. The Principal Subordinate Judge,
The Motor Accident Claims Tribunal,
Thiruvannamalai.
2. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.Neethiperumal, Advocate, S.R.No.12351

+1cc to M/s.M.Malar, Advocate, S.R.No.12454

+1cc to M/s.M.B.Gopalan Associates, Advocate, S.R.No.12528

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CS/05/01/2021



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