

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.83 of 2014

P.Sobitha Raj

.. Appellant

Vs.

1.Shanmugam

2.The United India Insurance Company Ltd.,
No.130, M.T.H.Road,
Ambattur,
Chennai-50.

.. Respondents

(The 1st respondent ex-parte in lower Court,
hence, notice may be dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.07.2013 made in M.C.O.P.No.2669 of 2009 on the file of Motor Accident Claims Tribunal, III Judge Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.D.Bhaskaran for R2

R1 - Exparte

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant seeking enhancement of compensation granted by the Tribunal in the award dated 04.07.2013 made in M.C.O.P.No.2669 of 2009 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes Judge, Chennai.

2.The appellant is the claimant in M.C.O.P.No.2669 of 2009 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes Judge, Chennai. He filed the said claim petition claiming a sum of Rs.10,00,000/-as compensation for the injuries sustained by him in the accident that took place on 01.06.2009.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tanker Lorry belonging to the first respondent and directed the second respondent-Insurance Company, on behalf of the first respondent, to pay a sum of Rs.2,20,900/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

4.The learned counsel for the appellant would submit that on 01.06.2009 at about 19.00 hours, while the appellant was proceeding in a motor cycle as pillion rider bearing Regn.No.TN-09-E-0304 at N.R.T. Road and West Mada Koil Street junction, Royapuram from west to east, a Tanker Lorry bearing Regn.No.TN-02-4626 was driven by its driver in a rash and negligent manner on the same direction and dashed against the motor cycle and also dashed against the auto rickshaw bearing Regn.No.TN-07-V-2972 and lost control and jumped on the left side platform. Due to the said incident, the appellant herein sustained grievous injuries. The learned counsel further submitted that the driver of the Tanker Lorry is responsible for the accident and the first respondent as the owner and the second respondent as the insurance company are jointly and severally liable to pay the compensation. The learned counsel further contended that the Court below has awarded only a meager amount and hence, prayed for enhancement of the compensation amount.

5.Per contra, the learned counsel for the second respondent relied on the counter filed by the second respondent and denied the allegations contained in the claim petition, except those that are specifically admitted. The amount of compensation claimed by the appellant is highly excessive and hence, prayed for dismissal of the present appeal.

6.Heard Mr.K.Varadha Kamaraj, learned counsel for the appellant and Mr.D.Bhaskaran, learned counsel for the second respondent.

7.A perusal of the records shows that the claimant has sustained fracture at right hip and right femure and the bones are not united and the appellant could not fold and sit on the floor and had suffered comminuted fracture dislocation acetabulum and right hip. Closed reduction and upper tibial skeletal traction right side was done. Dr.Saichandran (PW4) has assessed the partial permanent disability as 65%. The Tribunal has reduced the same to 60%, and awarded a sum of Rs.1,20,000/- (Rs.2,000/- per percentage). Considering the age and nature of injuries sustained by him, the Tribunal has rightly awarded a sum of Rs.1,20,000/- towards disability and this Court is not

inclined to interfere with the same. It is seen from the claim petition that the claimant was working as a Junior Executive - Accounts in Tablets (India) Ltd., and earning a sum of Rs.10,900/- per month. He has also produced the salary certificate marked as Ex.P14. Hence, the Tribunal had accepted the same and awarded a sum of Rs.32,700/- (Rs.10,900 X 3). The Tribunal has awarded a sum of Rs.5,000/- towards Extra Nourishment and Attender Charges, which are hereby increased to Rs.10,000/- each. The Tribunal failed to award any amount under the head of loss of amenities. Considering the nature of accident and age of the appellant, this Court is inclined to award a sum of Rs.20,000/- for the same. The amounts awarded by the Tribunal under other heads are just and reasonable and the same are hereby confirmed. The award passed by this Court under various heads is extracted hereunder:

7.A perusal of the records shows that the claimant has sustained fracture of frontal bone and cranio plasty was also done. Dr.Sauchandran (PW4) has assessed the partial permanent disability as 60% and the Tribunal has also accepted the same, at the rate of Rs.2,000/- per percentage and a sum of Rs.1,20,000/- has been awarded. Considering the age and nature of injuries sustained by him the Tribunal has rightly awarded a sum of Rs.1,20,000/- towards disability and this Court is not inclined to interfere with the same. It is seen from the claim petition that the claimant was working Junior Executive - Accounts in Tablets (India) Ltd., and earning a sum of Rs.10,800/- per month and he also produced the salary certificate marked as Ex.P7. Hence, the Tribunal had accepted the same and awarded a sum of Rs.32,400/- (Rs.10,800 X 3). Ex.P8 shows that the appellant was on loss of pay for more than three months i.e., from 02.06.2009 to 30.09.2009. Hence, this Court is inclined to interfere with the same and enhance the same to Rs.58,112/- as claimed by the appellant as per the salary slip. The Tribunal has awarded a sum of Rs.5,000/- towards transportation which is proper. The Tribunal has awarded a sum of Rs.5,000/- towards Extra Nourishment and the same is hereby enhanced to Rs.10,000/-. The Tribunal has awarded a sum of Rs.5,000/- towards attender charges, which is hereby increased to Rs.15,000/-. The Tribunal has rightly awarded a sum of Rs.3,500/- and Rs.50,000/- respectively towards medical expenses and pain and sufferings the same is hereby confirmed. The Tribunal failed to award any amount under the head of loss of amenities. Considering the nature of accident and age of the appellant, this Court is inclined to award a sum of Rs.50,000/- for the same. The award passed by this Court under various heads is extracted hereunder:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	32,400/-	58,112/-	enhanced
2.	Transportation	5,000/-	5,000/-	confirmed
3.	Extra Nourishment	5,000/-	10,000/-	enhanced
4.	Medical Expenses	3,500/-	3,500/-	confirmed
5.	Attender Charges	5,000/-	15,000/-	enhanced
6.	Pain and Sufferings	50,000/-	50,000/-	confirmed
7.	Permanent Disability	1,20,000/-	1,20,000/-	confirmed
8.	Loss of amenities	-----	50,000/-	awarded
	Total	Rs.2,20,900/-	Rs.3,11,612/-	enhanced by - Rs.90,712/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,20,900/- is hereby enhanced to Rs.3,11,612/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent-Insurance Company, on behalf of the first respondent, is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount already withdrawn, if any. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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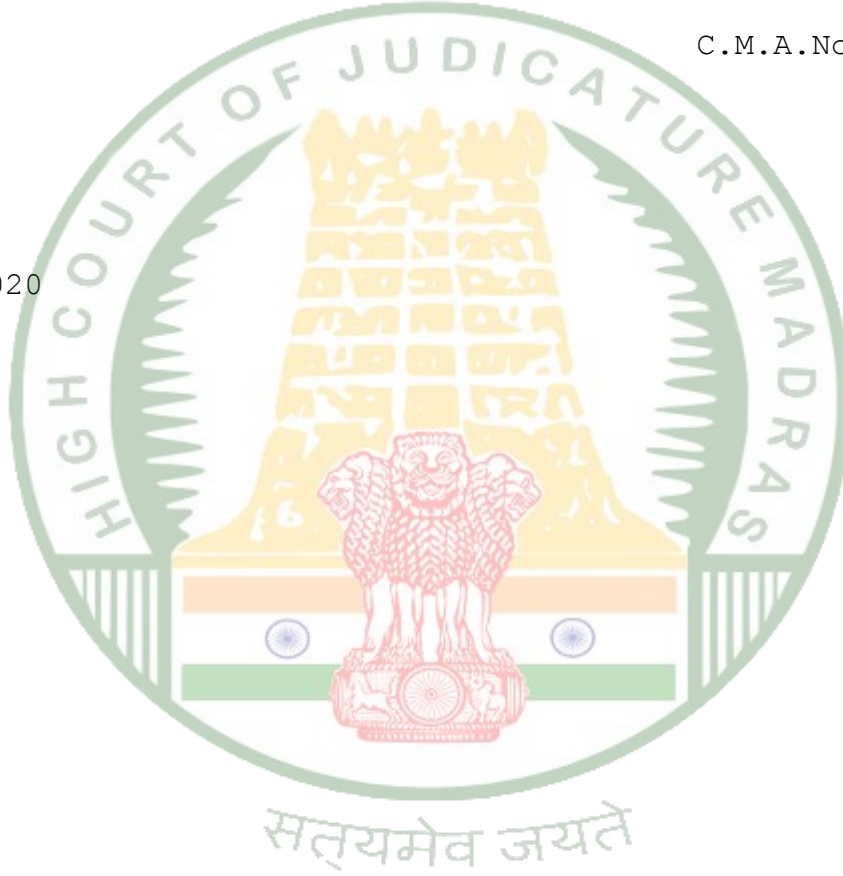
1.The IIIrd Judge,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

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

+1 cc to Mr.K.Varadha Kamaraj Advocate sr4318

C.M.A.No.83 of 2014

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