

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.10.2015

C O R A M

THE HONOURABLE Mr.JUSTICE B.RAJENDRAN

C.M.A. No. 1480 of 2011

Uma Mageswari

... Appellant/Petitioner

Vs

1. Prabakar

2. The Manager

The New India Assurance Co., Ltd.,

No.1, C.S.I. Complex,

Officer's lane, Vellore.

(R1 set exparte before the tribunal)... Respondents/Respondent

Prayer : Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and decree dated 08.2.2011 and made in MCOP.No.70 of 2007 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vellore and praying to set aside the same.

For Appellant : Mr.C.Prabakaran

For R1 : ex parte

For R2 : Mr.S.Jayasankar

J U D G M E N T

The claimant is the appellant. She moved the Motor Accident Claims Tribunal, Vellore in M.A.C.T.O.P.No. 70 of 2007 claiming a compensation in a sum of Rs.5,00,000/- for the grievous injury sustained by her in the accident that took place on 17.5.2007. The Tribunal awarded a sum of Rs.1,25,500/-, which is under challenge in this appeal seeking enhancement of the compensation.

2. Both sides did not dispute the liability and they restricted their arguments only with regard to the quantum awarded.

3. Learned counsel appearing for the appellant would submit that even though the appellant/claimant has suffered multiple injuries and the Doctor PW3 has given the medical certificate assessing the permanent disability at 45%, the Court below has fixed the permanent disability at 40% and awarded only a sum of Rs.40,000/- (Rs.1000x40) towards the same, which is very low. The learned counsel would further submit that though the appellant/claimant sustained open fracture both bones in her right forearm, fracture shaft of right femur, fracture medical condyle right femur and fracture both bones in right leg, the Court below has awarded meagre sum of Rs.10,000/- towards pain and suffering and Rs.2,500/- towards extra nourishment. The learned counsel for the appellant / claimant would also submit that the appellant has taken treatment even after being discharged from the hospital for several days but the court below has awarded meagre sum towards transportation and medical expenses. The learned counsel would also submit that the appellant due to the serious injuries sustained in the accident could not pursue his normal activities and cannot do any work for his livelihood. Though the claimant had claimed a sum of Rs.5,00,000/- as compensation, the Tribunal has awarded only a sum of Rs.1,25,500/-. Accordingly, she would pray for enhancement of the same.

4. Learned Counsel appearing for the respondent/ Insurance company would submit that the Court below, after taking into consideration the entire medical records and also the documents produced on the side of the claimant, has rightly awarded a sum of Rs.1,25,500/- and hence, no interference is warranted in this appeal.

5. Heard both sides and perused the records.

6. On a careful perusal of the judgment passed by the Court below, it is seen that the court below had awarded a total compensation of Rs.1,25,500/- under the following heads:

1. Transport	- Rs. 3,000/-
2. Extra nourishment	- Rs. 2,500/-
3. Pain and suffering	- Rs.10,000/-
4. Permanent Disability	- Rs.40,000/-
5. Medical expenses and Future medical expenses	- Rs.70,000/-

Total	- Rs.1,25,500/-

Though P.W.3 doctor has given certificate that the Claimant/appellant sustained 45% disability, the Court below has held that the claimant/appellant has sustained 40% disability and awarded a meagre sum of Rs.40,000/- i.e. Rs.1,000/- per

disability, which is not correct. Taking into consideration the disability certificate given by the doctor, I am inclined to fix disability at 45%. Considering the nature of disability, a sum of Rs.2,000/- per disability is awarded. Accordingly, total sum of Rs.90,000/- (Rs.2,000x45=Rs.90,000) is awarded under the head disability. Further, though the Court below has held that the claimant/appellant has sustained grievous injuries and open fracture both bones in her right forearm, fracture both bones in right leg and the same has been established, it has awarded meagre amount towards pain and suffering and Extra nourishment. Therefore, considering the pain undergone by the appellant/claimant, a sum of Rs.25,000/- is awarded under the head pain and suffering and a sum of Rs.10,000/- is awarded towards extra nourishment. It is seen that the appellant / claimant took treatment for 6 days as inpatient but the court below awarded a sum of Rs.70,000/- under the head medical expenses, which is not correct. Considering the medical bills produced by the petitioner and since she has sustained permanent disability and is taking treatment, a sum of Rs.1,65,000/- is awarded under the head Medical expenses and future expenses. Further, the appellant/claimant appellant has taken treatment even after being discharged from the hospital for several days but the court below has awarded meagre sum towards transportation. Considering the treatment undergone by the petitioner, a sum of Rs.10,000/- is awarded under the head transportation.

7. In the result, the judgment passed by the Court below is modified and the compensation of Rs.3,00,000/- is awarded as follows:-

1. Transport	- Rs. 10,000/-
2. Extra nourishment	- Rs. 10,000/-
3. Pain and suffering	- Rs. 25,000/-
4. Permanent Disability	- Rs. 90,000/-
5. Medical expenses and Future medical expenses	- Rs.1,65,000/-
Total	- Rs.3,00,000/-

8. Accordingly, the second respondent/Insurance Company is directed to deposit the entire compensation amount of Rs.3,00,000/-[Rupees three Lakhs only], less the amount already deposited, if any, to the credit of MCOP 70 of 2007 on the file of the Motor Accident Claims Tribunal, Sub Court, Vellore, within a period of six weeks from the date of receipt of a copy of this order along with an interest at the rate of 7.5% from the date of petition. It is needless to state that on such deposit being made, the appellant/claimant is entitled to withdraw the entire compensation amount along with interest, less the amount already withdrawn, if any, on making out a proper application before the court below.

10. With the above modification, this Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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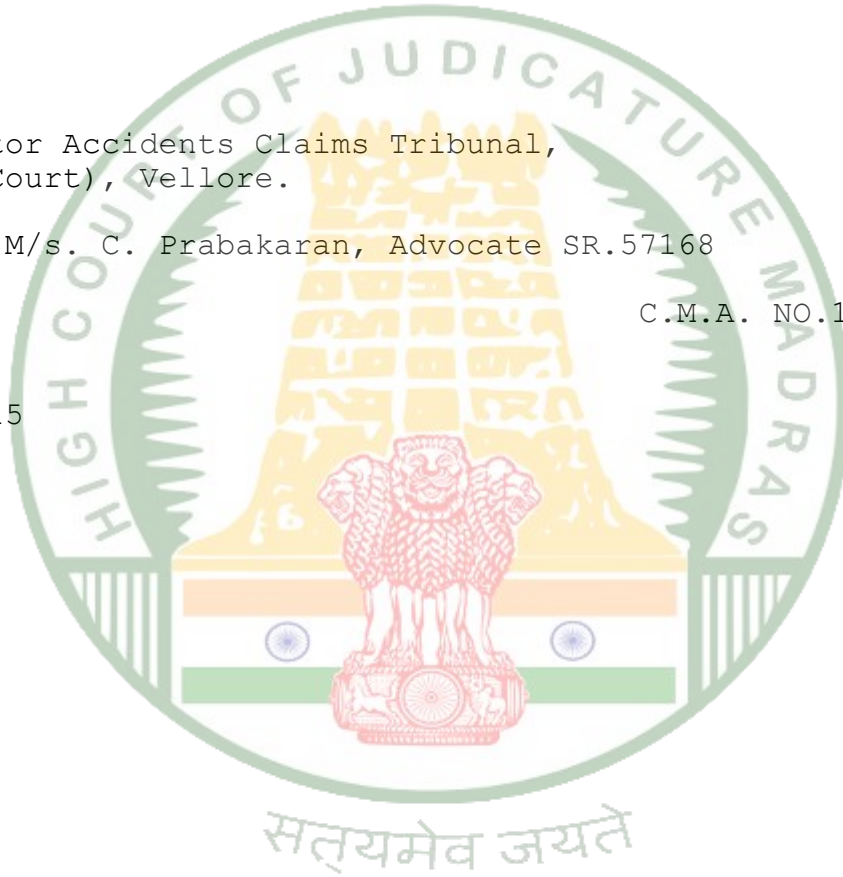
To

1. The Motor Accidents Claims Tribunal,
(Sub Court), Vellore.

+ 1 cc to M/s. C. Prabakaran, Advocate SR.57168

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RSI (CO)
Eu 25.11.15



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