

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 26.02.2016

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No. 1594 2011

M. Panchatcharam .. Appellant / Petitioner

Vs.

1. N.R. Associates  
No.2/2 Veteran Lane C  
Pallavaram  
Chennai - 600 043.
2. M/s. New India Assurance Co. Ltd.,  
No.104- 106, Sector 34-C  
Chandigar. .. Respondents/ Respondents  
(R1 exparty in lower court)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 18.09.2010 made in M.C.O.P No. 1339 of 2007 on the file of the Motor Accidents Claims Tribunal (Small Causes Court No.IV), Chennai.

For Appellant : Mr. T.G. Balachandran

For 2<sup>nd</sup> Respondent : Mr. K. Vinod for R2  
R1 - Given up

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the claimant, challenging the award dated 18.09.2010 made in M.C.O.P No. 1339 of 2007 on the file of the Motor Accidents Claims Tribunal (Small Causes Court No.IV), Chennai.

2. In an accident which occurred on 14.02.2007, the claimant sustained fracture of right clavicle and multiple injuries all over his body. Hence, he filed a Claim Petition before the Tribunal seeking a sum of Rs.1,50,000/- as compensation. After analyzing the available oral and documentary evidence, the Tribunal awarded a sum of Rs.60,500/- as compensation, under the following heads, with interest at the rate of 7.5 per annum :

| Sl. No. | Heads                 | Amount        |
|---------|-----------------------|---------------|
| 1       | Loss of Income        | Rs. 13,500.00 |
| 2       | Transport to hospital | Rs. 5,000.00  |
| 3       | Extra Nourishment     | Rs. 5,000.00  |
| 4       | Damage to clothing    | Rs. 1,000.00  |
| 5       | Medical Expenses      | Rs. 2,000.00  |
| 6       | Pain and Sufferings   | Rs. 10,000.00 |
| 7       | Permanent disability  | Rs. 24,000.00 |
|         | Total                 | Rs. 60,500.00 |

3. According to the learned counsel appearing for the appellant/claimant, at the time of accident, the claimant, as an auto driver was earning Rs.500/- per day. Based on the available material evidence, the Tribunal fixed his age at 57 years. Due to the accident, the claimant had suffered fracture of right clavicle and other multiple injuries and was taking treatment as an inpatient at Rakshith Hospital, Chennai during 14.02.2007 and 15.02.2007. Thereafter, he had undergone Puthur treatment, thrice. Inspite of the said treatment, 30 degree movement is restricted. However, the Tribunal fixing the disability only at 20% and considering the age and the nature of injuries fixed Rs.1200/- per percentage and a sum of Rs.24,000/- has been granted by the Tribunal towards "Permanent Disability", which is on the lower side. He further submitted that no amount has been granted under the heading "loss of amenities" and the Tribunal has erred by not considering the medical bills and has granted only Rs.2000/- towards medical expenses. He further contended that the quantum of compensation awarded by the Tribunal under the other heads are too low, when compared to the injuries sustained by the claimant, in the accident.

4. On the other hand, the learned counsel for the respondent/ Insurance Company would submit that the appellant/ claimant has failed to prove his age, income etc. and no documentary proof has been produced. Further, the quantum of compensation granted by the Tribunal cannot be said to be grossly inadequate, warranting enhancement. He submitted that the claims Tribunal has properly adverted to the facts and evidence and hence prayed for dismissal of the Civil Miscellaneous Appeal.

5. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

6. As rightly contended by the learned counsel for the appellant/ claimant, sufficient medical evidences have been adduced by the appellant, before the claims Tribunal, to prove that the injured has sustained a fracture of right clavicle and other injuries. Hence, the amount granted towards Medical

Expenses, need to be enhanced. Considering the nature of injuries and Puthur treatment and the 30% restricted movement, the Disability should be considered as 30%. It is not in dispute that the appellant would have experienced severe pain and suffering at the time of accident, for a long period, and considering the same, the quantum of compensation of Rs.10,000/- awarded under the head paid and suffering is grossly inadequate. However, the claim for compensation by the appellant/ claimant for taking treatment in a private hospital cannot be granted. Considering the nature of injuries, the age of the appellant/ claimant and sufferings undergone, this Court is of the view that Rs.2000/- need be considered per percentage, towards Permanent Disability and grants Rs.60,000/- towards "Permanent Disability" [Rs.2000 x 30%]. Further, when we analyse the heads under which the compensation is awarded, we are of the view that compensation under the heading "Loss of amenities", ought to have been granted by the Tribunal. Hence, this Court is inclined to enhance the compensation awarded by the Tribunal and the break-up details of the revised award would run thus :

| Sl. No. | Heads                         | Award of the Tribunal | Revised Award of this Court |
|---------|-------------------------------|-----------------------|-----------------------------|
| 1       | Loss of Earning               | Rs. 13,500.00         | Rs. 13,500.00               |
| 2       | Transport Expenses            | Rs. 5,000.00          | Rs. 5,000.00                |
| 3       | Extra Nourishment             | Rs. 5,000.00          | Rs. 5,000.00                |
| 4       | Damage to Clothing & Articles | Rs. 1,000.00          | Rs. 1,000.00                |
| 5       | Medical Expenses              | Rs. 2,000.00          | Rs. 12,000.00               |
| 6       | Pain and Sufferings           | Rs. 10,000.00         | Rs. 20,000.00               |
| 7       | Permanent Disability          | Rs. 24,000.00         | Rs. 60,000.00               |
| 8       | Loss of amenities             | --                    | Rs. 20,000.00               |
|         | Total                         | Rs. 60,500.00         | Rs. 1,36,500.00             |

7. There is no serious objection in respect of the interest granted at 7.5% per annum, since the accident is of the year 2007.

8. Accordingly, the award of the Tribunal is enhanced to Rs.1,36,500/- from Rs.60,500/-. The interest granted by the Tribunal at 7.5% per annum is confirmed. The 2<sup>nd</sup> respondent/

Insurance Company is directed to deposit the entire award amount together with accrued interest, less the amount already deposited, to the credit of M.C.O.P.No.1339 of 2007 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.IV, Chennai, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal shall pay compensation to the claimant in the form of a crossed Account Payee Cheque, favouring only the claimant and it should not be issued in favour of any other person/Company.

9. The Civil Miscellaneous Appeal is allowed. No costs.

Sd/-  
Asst.Registrar (CS IV )

/true copy/

Sub Asst. Registrar

avr

To:

1. The Registrar,  
The Motor Accidents Claims Tribunal  
Small Causes Court IV, Chennai.

2. The Section Officer  
VR Section,  
High Court, Madras

1 cc to Mr.T.G. Balachandran, Advocate, Sr. 12433

1 cc to Mr.K. Vinod, Advocate, Sr. 12366

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C.M.A.NO. 1594 of 2011

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