

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.Nos.2054 & 2055 of 2016

The New India Assurance Company Ltd.,
No.45, Moore Street
Chennai 600 001

.. Appellant /R2 in both the appeals

-vs-

1.S.Gandeepan ... 1st respondent/Petitioner
in CMA No.2054 of 2016
1.K.Manimaran ...1st respondent/Petitioner
in CMA No.2055 of 2016
2.J.Shekar ...2nd respondent/R1
in both the appeals

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the common award and decree dated 15.3.2016 made in M.C.O.P.Nos.7446 & 7454 of 2014 on the file of the Motor Accidents Claims Tribunal (II Judge, Court of Small Causes), Chennai.

For Appellant :: Mr.R.Neethi Perumal

JUDGMENT

The New India Assurance Company Limited, Chennai has brought these appeals challenging the correctness of the impugned common award passed by the Motor Accident Claims Tribunal (II Judge, Court of Small Causes), Chennai in M.C.O.P.Nos.7446 & 7454 of 2014 dated 15.3.2016, awarding a sum of Rs.3,60,000/- & Rs.4,45,000/- respectively along with interest at the rate of 7.5% per annum (except for Rs.40,000/- awarded towards future medical expenses to the claimant in M.C.O.P.No.7454 of 2014) from the date of petition till the date of deposit to the contesting first respondent/claimant in each of the appeals for the multiple injuries sustained by them in the road accident.

2. Learned counsel for the appellant-Insurance Company, assailing the impugned common award, has submitted that the Tribunal has unreasonably awarded a sum of Rs.50,000/- each to the injured claimants for transportation, nourishment and miscellaneous expenditure. Again he submitted that the Tribunal

has unreasonably awarded a sum of Rs.20,000/- each to the injured claimants towards attender charges. The learned counsel also submitted that the award of Rs.1,80,000/- and Rs.1,35,000/- respectively to the injured claimants for disability is on the higher side. Therefore, he requested this Court to modify the amount under the above heads.

3. This Court hardly finds any justification in his submissions. The reason is that on 28.9.2014 at about 5.30 hours, when Mr.S.Gandeepan was riding the motorcycle bearing Registration No.TN 18 L 7165 along with Mr.K.Manimaran as pillion from east to west at Vanagaram Vembuli Amman Koil, near Poonamallee High Road-Mettupakkam road junction, a tractor bearing Registration No.TN 22 Y 4986 proceeding from the opposite direction dashed against the motorcycle, resultantly the rider and pillion were thrown out of the motorcycle and they sustained grievous injuries all over the body including fracture of right hand and fracture of right tai bone respectively. Immediately, they were given first-aid at Government Kilpauk Medical College Hospital, Chennai and thereafter, the injured claimant in M.C.O.P.No.7446 of 2014 was shifted to Rajiv Gandhi General Hospital, Chennai for further treatment and the injured claimant in M.C.O.P.No.7454 of 2014 was shifted to Nobel Hospital for further treatment. The Tribunal, considering the question as to who was negligent in causing the accident, based on the registration of First Information Report as well as the evidence of P.Ws.1 & 2 and also keeping in mind that the driver of the second respondent's vehicle has not even come to the witness box either to speak about the manner of the accident or to the plea of contributory negligence against the rider of the motorcycle, has come to the conclusion that the accident took place due to the rash and negligent driving by the driver of the offending vehicle viz., the tractor. Subsequently, while answering the question of liability, as the owner of the offending vehicle remained ex parte and the insurance company alone contested the case, the Tribunal, holding that the insurance company is vicariously liable for the compensation payable to the injured claimants, has fastened the liability on the appellant insurance company. The Tribunal also took into account the discharge summaries marked as Exs.P3 & P6 issued by Rajiv Gandhi General Hospital, Chennai and Nobel Hospital to the effect that the injured were taking treatment as in-patients from 28.9.2014 to 11.10.2014 and from 1.10.2014 to 6.10.2014 for chip fracture of styloid process of right ulna and fracture of shaft of right femur respectively. It has also considered the pay slips marked as Exs.P13 & P.15 issued for the month of August, 2014 and also the loss of pay certificates marked through P.W.4-Vinoth certifying that they were earning a sum of Rs.15,000/- per month and that they were unable to attend their office for a period of four months. Accordingly, the Tribunal has awarded a sum of Rs.50,000/- each for transportation,

nourishment and miscellaneous expenditure and Rs.60,000/- each for loss of earning to the injured and this Court is not able to find any error in the said fixation. Similarly, a very reasonable amount of Rs.20,000/- each has been awarded towards attender charges considering the period of treatment.

4. With regard to the disability, the Tribunal, based on the disability certificate, Ex.P10 issued by P.W.3 certifying 45% & 60% partial permanent disability suffered by the injured on account of the fracture of styloid process of right elbow and also fracture of shaft of right femur and there is restriction in the movement, gripping power etc., has fixed the disability at 45% and 60% respectively considering the severity and accordingly granted a sum of Rs.1,35,000/- and Rs.1,80,000/- respectively at the rate of Rs.3,000/- per percentage of disability. Therefore, this Court is not able to find any fault with the said fixation also. Finally, the Tribunal has arrived at the total compensation to both the injured as per the calculation detailed below:-

	MCOP No.7446/14	MCOP No.7454/14
1. Transportation, nourishment and miscellaneous expenditure	Rs. 50,000/-	Rs. 50,000/-
2. Medical expenses	Rs. 25,000/-	Rs. 25,000/-
3. Future Medical expenses	--	Rs. 40,000/-
4. Attender charges	Rs. 20,000/-	Rs. 20,000/-
5. Disability	Rs.1,35,000/-	Rs.1,80,000/-
6. Loss of earning	Rs. 60,000/-	Rs. 60,000/-
7. Damages for pain, suffering, trauma	Rs. 50,000/-	Rs. 50,000/-
8. Loss of amenities	Rs. 20,000/-	Rs. 20,000/-
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Total	Rs. 3,60,000/-	Rs.4,45,000/-
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A perusal of the same would show that the Tribunal has not committed any mistake while arriving at the compensation payable to the injured claimants for the multiple injuries sustained by them in the road accident. Accordingly, the civil miscellaneous appeals fail and they are dismissed. Consequently, C.M.P.Nos.15021 & 15022 of 2016 are also dismissed.

5. Since only the statutory amount of Rs.25,000/- has been deposited, the appellant-insurance company is directed to deposit the entire balance award amount along with interest in each case as per the common award to the credit of the M.C.O.P.Nos.7446 & 7454 of 2014 on the file of the Motor Accidents Claims Tribunal (II Judge, Court of Small Causes), Chennai within a period of four weeks from the date of receipt of a copy of this order and on such deposit, it is for the first

respondent/claimant in each case to withdraw the amount with accrued interest by moving appropriate application before the Tribunal.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

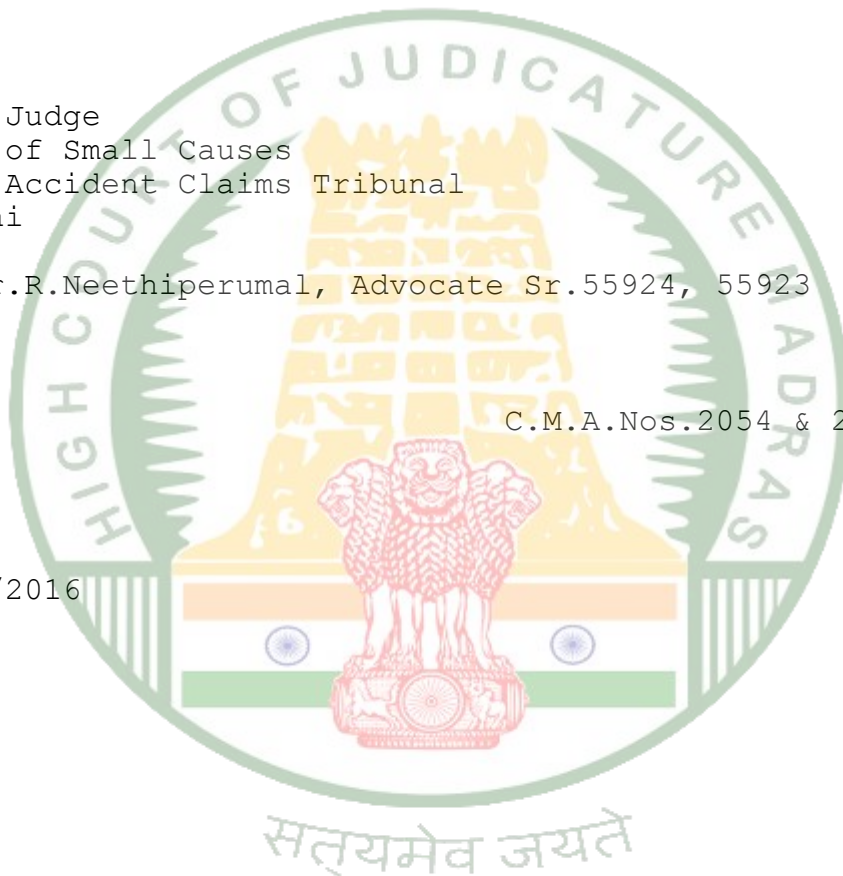
To

1. The II Judge
Court of Small Causes
Motor Accident Claims Tribunal
Chennai

+2cc to Mr.R.Neethiperumal, Advocate Sr.55924, 55923

C.M.A.Nos.2054 & 2055 of 2016

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srg 22/11/2016



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