

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.12.2016

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. Nos. 2577 and 2578 of 2016
and
CMP Nos.18439 and 18440 of 2016

C.M.A.No.2577 of 2016

National Insurance Co. Ltd,
No.751, 2nd Floor, Anna Salai,
Chennai - 600 002

.. Appellant/2nd Respondent

versus

1. M.Devaguru
2. A.P.P.Motors

.. Respondents/Petitioner & 1st
Respondent

Appeal filed under Section 173 of the Motor Vehicles Act,
1988 against the Award and decree dated 28.07.2015 made in
O.P.No.4311 of 2013 on the file of Motor Accidents Claims
Tribunal (In the IV Court of Small Causes), Chennai.

C.M.A.No.2578 of 2016

National Insurance Co., Ltd,
No.751, 2nd Floor, Anna Salai,
Chennai-600 002.

..Appellant/2nd Respondent

versus

1. D.Varalakshmi
2. A.P.P.Motors

..Respondents/Petitioner &
1st Respondent

Appeals filed under Section 173 of the Motor Vehicles Act,
1988 against the Award and decree dated 28.07.2015 made in
O.P.Nos.4312 of 2013 on the file of Motor Accidents Claims
Tribunal (In the IV Court of Small Causes), Chennai.

For appellants : Mr.D.Bhaskaran
(in both C.M.A.'s)

For respondents
(in C.M.A.No.2577 of 2016): Mr.T.Velu
for Mr.Terry Chellaraja
(in C.M.A.No.2578 of 2016) for R1 in both CMA's

C O M M O N J U D G M E N T

Challenging the quantum of compensation awarded to the claimants for the injuries suffered by them in the accident that occurred on 1.8.12, in M.C.O.P.Nos.4311 and 4312 of 2013, as excessive, the appellants/Insurance Company has filed these Civil Miscellaneous Appeals.

C.M.A.No.2577 of 2016 (M.C.O.P.No.4311 of 2013):

2. in respect of the injuries sustained by him in the accident that occurred on 01.08.2012, the claimant, Devaguru, filed a claim petition in M.C.O.P.No.4311 of 2013, claiming compensation in a sum of Rs.10,00,000/-, but restricted it to Rs.6,00,000/-. The Tribunal, on considering the oral and documentary evidence, awarded a sum of Rs.50,000/- to the claimant. Aggrieved by the same, the Insurance Company has preferred the appeal in C.M.A.No.2577 of 2016.

3. A perusal of the award would go to show that the petitioner was admitted in the Indira Gandhi Government General Hospital and Postgraduate Institute Pondicherry on 01.08.2012 and then he has taken a private treatment. It is the case of the claimant that because of the injuries sustained in the said accident, he is not able to discharge his day-to-day works. A copy of the Accident Registrar was marked as Ex.P2. No proof of disability having been filed and the also Doctor having not been examined to speak about the disability, the injuries sustained by the claimant were treated to be simple in nature and, therefore, a compensation in a sum of Rs.50,000/= was awarded.

4. The reasons for awarding the said sum of Rs.50,000/= being cogent and reasonable, this Court is of the considered opinion that no interference is called for with the award passed in M.C.O.P.No.4311 of 2013. Accordingly, the award passed in MCOP No.4311 of 2013 is confirmed and the appeal 2757 of 2016 stands dismissed.

C.M.A.No. 2578 of 2016 (M.C.O.P.No.4312 of 2013)

5. The claimant, Varalakshmi, who was riding as a pillion

rider in the vehicle that was involved in the accident, filed M.C.O.P.No.4312 of 2013, claiming compensation in a sum of Rs.10,00,000/- for the injuries sustained by her. As against the said claim, the Tribunal awarded a sum of Rs.4,86,000/-. Challenging the quantum of compensation as excessive ,the Insurance Company has preferred this appeal.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the materials available in the typed set of documents.

7. The Tribunal has passed an award in a sum of Rs.4,86,000/= as compensation, the break-up details of which are as under :-

Disability	-	Rs. 90,000/-
Pain and suffering	-	Rs. 75,000/-
Extra nourishment	-	Rs. 50,000/-
Transport to Hospital	-	Rs. 40,000/-
Damages to clothes	-	Rs. 3,000/-
Attender charges	-	Rs. 30,000/-
Medical Expenses	-	Rs. 50,000/-
Future Medical Expenses	-	Rs. 25,000/-
Loss of Income	-	Rs. 78,000/-
		Rs.4,86,000/-

8. In order to appreciate the grounds of appeal, it is necessary to look into the details of the documents marked. The petitioner was a tailor by profession. It is her case that because of the grievous injuries sustained by her, she suffered 100% loss of income as she is not able to discharge her avocation. The discharge summary is marked as Ex.P4. The doctor, who was examined as P.W.3, has opined that the injuries sustained by the petitioner are in the nature of permanent partial disability. Ex.P-7 is the disability certificate issued by the doctor, wherein the disability has been assessed at 35%. However, the Tribunal fixed the disability at 30%, and quantified the compensation at Rs.3,000/- per percentage of disability and, accordingly, awarded a sum of Rs.90,000/=. Though the doctor has assessed the disability at 35%, the Tribunal, without any cogent and reasonable reasons has fixed the disability at 30%, which is unsustainable. In such view of the matter, this Court, accepting the disability as fixed by the doctor at 35%, quantifies the disability compensation at Rs.3000/= per percentage of disability and, accordingly, the claimant is entitled to a sum of Rs.1,05,000/= as compensation towards 35% disability.

9. However, insofar as the compensation awarded under the other heads, without any proper and just reasons, the Tribunal has awarded the above amounts. The compensation awarded under the heads "pain & suffering", 'extra nourishment', 'transportation' and 'loss of income' are on the very excessive side. There being no material to award such excessive amounts as compensation, the award of compensation by the Tribunal on the above heads is totally unjustified. Similarly, the award of compensation under the head 'future medical expenses' is also not justified. No evidence has been let in to show that there would be any requirement for future medical treatment. In such circumstances, the compensation awarded under the head 'future medical expenses' is wholly unwarranted. For the reasons stated above, this Court is of the opinion that apart from the disablement compensation, which has been enhanced above, the amounts awarded under the other heads are not only on the higher side, but are also not required to be awarded and, therefore, feels that the same needs to be reduced. Accordingly, the compensation awarded under the heads are modified as under :-

S. No.	Compensation awarded under	Awarded by the Tribunal	Awarded by this Court
	Disability	Rs.90,000/=	Rs.1,05,000/=
	Pain & Suffering	Rs.75,000/=	Rs.25,000/=
	Extra Nourishment	Rs.50,000/=	Rs.20,000/=
	Transportation	Rs.40,000/=	Rs.10,000/=
	Damage to Clothing	Rs.3,000/=	Rs.3,000/=
	Attendant Charges	Rs.30,000/=	Rs.15,000/=
	Medical Expenses	Rs.50,000/=	Rs.10,000/=
	Future Medical Expenses	Rs.78,000/=	-
	Loss of Income	Rs.78,000/=	Rs.26,000/=
	Loss of Earning Power	Rs.25,000/=	Rs.25,000/=
	Loss of Amenities	Rs.20,000/=	Rs.20,000/=
	Total		Rs.2,59,000/=

In the result, the appeal is partly allowed and the award passed by the Tribunal is reduced from Rs.4,86,000/- to Rs.2,59,000/-, which is payable with interest @ 7.5% from the date of petition, till the date of payment. The appellant is directed to deposit the award amount quantified by this Court above, less the amount, if any, already deposited, along with interest within a period of four weeks from the date of receipt

of a copy of this order. On such deposit being made, the claimant is permitted to withdraw the award amount on filing necessary application.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

arr/GLN

To

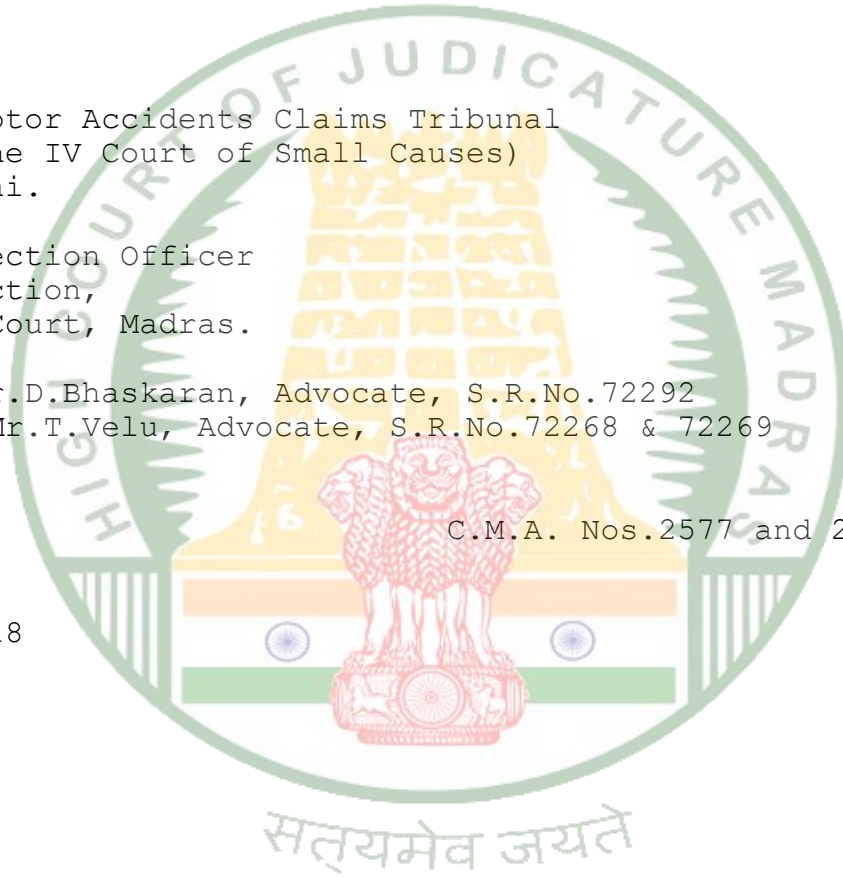
1. The Motor Accidents Claims Tribunal
(In the IV Court of Small Causes)
Chennai.
2. The Section Officer
VR Section,
High Court, Madras.

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.72292

+2ccs to Mr.T.Velu, Advocate, S.R.No.72268 & 72269

C.M.A. Nos.2577 and 2578 of 2016

SVI (CO)
CS/26/02/18



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