

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 11/8/2016

CORAM

THE HON'BLE MR.JUSTICE T. MATHIVANAN

C.M.A. Nos. 459/2015 & 1850, 1851, 1852 & 1853/2015

Against

MCOP Nos. 2342, 2343, 2993 of 2010 and 994/2011

(On the file of V Small Causes Court, Chennai/ Motor Accident
Claims Tribunal Chennai)

CMA.No.459/2015:

S. Malini ... Appellant / Petitioner
Vs.

1.S. Shaik Sulaiman

2.The United India Insurance Co. Ltd....

No.134 Greens Road, Silingi Building,
IV Floor, HUB, chennai-6.

Respondent/ Respondent

CMA.No.1850/2015 to 1853/2015:

United India Insurance Co.Ltd.,
No.826, 7th Floor, Tarapole Towers
Mount Road, Chennai-2.

Appellant in all the appeals/2nd
Respondent

VS

1.R.Malini

1st Respondent in
CMA.No.1850/2015/ Claimant

1.S.Saren raj(Minor)

rep.by his Mother and Natural Guardian
and Next friend S.Ruby

1st Respondent in
CMA.No.1851/15/Claimant

1.B.Shanthi

1st Respondent in CMA.No.1852/15
/Claimant

1.B.Alex

(Minor) rep.by his Mother & Natural
Guardian & Next Friend B.Shanthi

1st Respondent in CMA.No.1853/15
/Claimant

2.S.Shaik Sulaiman

2nd Respondent in all appeals
/1st Respondent

Common Prayer: Questioning the liability the Appellant Insurance Company who is the 2nd Respondent in all the claim petitions has preferred these appeals under Section 173 of MV Act 1988 to set aside the common award dt.22.4.2013 and made in the claim petitions in MCOP Nos. 2342, 2343, 2993/2010 & 994 /2011.

C.M.A. No. 459/2015

Having been not satisfied with the award passed by the Tribunal dt. 22.4.2013 and made in the Claim Petition in MCOP No. 2342 / 2010 the Claimant Ms. R. Malini has filed this appeal seeking enhancement of compensation.

1. All the Civil Miscellaneous Appeals viz. 459/2015 & 1850, 1851, 1852 & 1853/2015 have arisen out of the common award dt. 22.4.2013 and made in the claim petitions in MCOP Nos. 2342, 2343, 2993 of 2010 and 994/2011.

2. With the issue arise from all the appeals is one and the same and the parties to the appeals are also one and the same, all the appeals have been consolidated together, heard jointly, and disposed of in this common judgment.

COMMON JUDGEMENT

That on 19.4.2010 at about 9.00 a.m. the Claimants in the claim petitions viz. 2342, 2343, 2993 of 2010 and 994/2011 were travelling in the auto rickshaw bearing registration No. TN 04 AZ 0189 belonging to the 2nd Respondent herein. When the auto rickshaw was proceeding on CB Road, the driver of the auto had driven the same in a rash and negligent manner endangering to the public safety and applied sudden break. On account of this reason the driver had lost control over the vehicle and as a result of which the auto rickshaw had turned turtle. Due to this accident the inmates of the auto rickshaw who are the Claimants herein had sustained severe injuries as detailed below:-

- a) The Claimant Ms. R. Malini (MCOP 2342/2010) had sustained the following injuries.
 - i) Fracture of left clavicle bone
 - ii) Multiple injuries on all over her body
- b) S. Saranraj, Minor Claimant (Represented by his mother and natural guardian Ruby)
 - i) Injury over his right hip
 - ii) Injury over his left loin

- iii) Injury over his left foot
- iv) Injury over his right knee
- v) Multiple injuries on all over his body

- Ms. B. Shanthi (MCOP 2993/2010)

- i) Injury over her left arm
- ii) Injury over her left and right knees
- iii) Multiple injuries on all over her body

- B. Alex, Minor, represented by his mother and guardian B. Shanthi

- i) Injury over on the head
- ii) Injury over the frontal region
- iii) Contusion over the head
- iv) Nasal injury
- c) Multiple injuries on all over his body

- 2. Therefore claiming Rs. 1,50,000/-, Rs. 1,00,000/-, Rs. 50,000/- & Rs. 1,00,000/- respectively, the Claimants have moved the Accident Claims Tribunal (V Court of Small Causes), Chennai.

- 3. The 1st Respondent in all the claim petitions remained ex-parte. The 2nd Respondent insurance company who is the Appellant herein had contended that :-

(i) The driver of auto rickshaw bearing registration no. TN 04 AZ 0189 was not having valid and effective driving license.

(ii) At the time of accident 4 persons were travelling in the auto rickshaw which is against the provisions of Motor Vehicle Act.

- (iii) As the 1st Respondent had violated the policy condition the insurance company is not liable to compensate the loss of the insured shall not be held liable.

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- 4. The Claimant in MCOP No. 2342/ 2002 had examined herself as PW1. The guardian and mother of minor Claimants Saran Raj and Alex had examined themselves as PW2 & PW3 respectively. One Dr. K.J. Madhiazhagan was examined as PW4. During the course of their examination Exs. P1 to P13 were marked. On the other hand one Soundarya Pandian was examined as RW1. During the course of his examination, Ex. R1 to R4 were marked.

5. The Claimant Ms. R. Malini who is also the Appellant in C.M.A. No. 459/2015 had contended that at the time of accident she was aged about 25 years and working in a bag company as sales girl and was earning a sum of Rs. 3000/- p.m.

PW4 Dr. K.J. Madhiazhagan had assessed her disability at 30%. He had also stated that due to fracture of left shoulder she had found difficulty in lifting heavy objects and she could not lift her hand beyond 90°. Therefore he had assessed her disability at 30%. Soon after the accident she was taken to Government Standley Hospital, Chennai and admitted therein as an inpatient. Even after her discharge she continued her treatment as out-patient. It is also revealed from Ex. P1 discharge summary issued by Standley Hospital, that she had sustained fracture over her left clavicle and was treated as an inpatient from 19.4.2010 to 26.4.2010 and thereafter she was treated as out-patient on 6.5.2010, 27.5.2010, 19.5.2010 & 10.6.2010.

6. Though PW4 Dr. K.J. Madhiazhagan had assessed her disability at 30% the Tribunal had reduced the same to 20%. The Tribunal had also decided that since she was aged about 25 years she is entitled to get Rs. 2000/- per percentage. The Tribunal had therefore awarded Rs. 40,000/- towards permanent disability, and apart from this the Tribunal had also awarded compensation under the following heads:-

• Loss of earning	: Rs. 6,000
• Transportation	: Rs. 5,000
• Extra Nourishment	: Rs. 5,000
• Damage to clothes	: Rs. 500
• Pain & Suffering	: Rs. 20,000
• Towards Permanent Disability (20% x2000)	: Rs. 40,000
Total	: Rs. 76,500

- 7. The Claimant in MCOP No. 2343/2010 had totally claimed a sum of Rs. 1,00,000/-. Since he was minor, his mother Mrs. S. Ruby was examined as PW2. Ex. P6 discharge summary issued by Government Standley Hospital discloses that he had sustained abrasion measuring 4 x 0 cm over his loin. He had also sustained injuries over his right knee medial aspect of 3x4 cm in size. He was treated as inpatient from 19.4.2010 to 22.4.2010. At the time of accident he was studying in 8th std. Since he had been taking treatment as an inpatient for 5 days, the Tribunal had awarded a sum of Rs. 25,000/-.

- 8. The Claimant in MCOP 2993/2010 Mrs. Shanthi, as it is revealed from Ex. P8 discharge summary had sustained the following injuries:-

- (i) abrasion over her left arm 3 x 2 cm in lateral aspect,
- abrasion over her left forearm measuring 15 x 20 cm in

lateral aspect.

- abrasion over left knee measuring 3 x 1 cm and
 - abrasion over right knee measuring 2 x 2 cm and
 - She was treated as inpatient from 19.4.2010 to 21.4.2010.
9. On considering the period of treatment for 3 days the Tribunal had awarded a sum of Rs. 25,000/- towards compensation.
10. The Claimant in MCOP 994/2011 Alex is concerned, his mother Tmt. B. Shanthi who is the Claimant in MCOP 2993/2010 was examined as PW3. Ex. B9 discharge summary reveals that the minor Claimant Alex had sustained the following injuries:-
- abrasion over his right forehead measuring 2 x 1 cm.
 - Abrasion 1 x 1 cm over his right supra orbital region,
 - contusion 3x2x0.5 over his forehead
 - He was treated as an inpatient in Government Standley hospital from 19.4.2010 to 22.4.2010. For this Claimant the Tribunal had totally awarded a sum of Rs. 25,000/-.
11. The owner of the vehicle and insurance company were held liable to pay compensation to all the Claimants with interest at the rate of 7.5%.
12. Since the owner of auto rickshaw had violated the policy condition as he has allowed 4 members to travel in the auto, the Appellant Insurance Company had contended that the owner alone ought to have been held responsible. However it was rejected by the Tribunal. Therefore the Insurance Company, challenging the award on the ground of liability has preferred the appeals in C.M.A. No. 1850, 1851, 1852 & 1853/2015, before this court.
13. The Claimant in MCOP No. 2342/2010 Ms. Malini seeking enhancement of compensation has filed the appeal in C.M.A. No. 459/2015.
14. She has contended that though PW4 Dr. K.J. Madhiahagan had assessed her disability at 30%, the Tribunal without assigning any reason, had reduced the same to 20% and awarded Rs. 40,000/- under the head of permanent disability in the ratio of Rs. 2000 per percentage which is absolutely erroneous and the Tribunal ought to have awarded the compensation for permanent disability at Rs. 3000/- per percentage without reducing the percentage of disability to 20% from 30% and besides

this she has also contented that the court had erroneously determined the compensation under the head of pain and suffering at Rs. 20,000/- and for transportation at Rs. 5000/-. She has therefore urged this court to allow the entire claim i.e. to the extent of Rs. 1,50,000/-.

- 15. The Tribunal had reduced the percentage of disability to the extent of 20% from 30%. It is absolutely wrong because PW4 Dr. K.J. Madhiazhagan has stated that after examining the Claimant Malini clinically, he had assessed her disability at 30%. He has also stated that due to fracture of left shoulder it is difficult for her to lift her left hand beyond 90°. He has also stated that after the accident, she could not lift even light weight articles using her left hand and it is also difficult for her to do her routine work using her left hand. In order to assess the disability at 30% Dr. K.J. Madhiazhagan had also examined Ex.P12 & 13 x-ray film. Considering this aspect and also the sufferings experienced by the Claimant Malini this court finds that the percentage of disability assessed by PW4 Dr. K.J. Madhiazhagan at 30% need not be reduced. Besides this, this court also finds that instead of awarding compensation at Rs. 2000/- per percentage a sum of Rs. 3000/- can be awarded. Accordingly she is entitled to get Rs. 90,000/- towards permanent disability. In other aspects the award granted by the Tribunal can be maintained.
- 16. In view of the above fact the award of the Tribunal in so far as the Claimant Ms. Malini is concerned is enhanced to Rs. 1,26,000/- from Rs. 76,500/- as detailed below :-

• Towards Permanent Disability	: Rs. 90,000
(Rs. 3000 * 30%)	
• Loss of earning	: Rs. 6,000
• Transportation	: Rs. 5,000
• Extra Nourishment	: Rs. 5,000
• Damage to clothes	: Rs. 500
• Pain & Suffering	: Rs. 20,000
Total	: Rs. 1,26,500

- 17. Accordingly the appeal 459/2015 filed by the Claimant Malini (MCOP No.2342) is allowed and the appeal filed by the Appellant Insurance Company in C.M.A. No. 1850 / 2015 is dismissed.

- 18. In so far as other appeals are concerned the contention raised by the Appellant Insurance Company is not able to be accepted because at the time of accident the autorickshaw was insured with the Appellant Insurance company and part from this two minor boys were travelling along with their respective mothers. Considering this position the theory of travelling of excess person cannot be applied in this case. Accordingly the appeals in C.M.A. No. 1850, 1851, 1852 & 1853/2015 are dismissed confirming the award passed by the Tribunal in MCOP 2343, 2993/2010 & 994 /2011.
- 19. The award passed by the Tribunal in claim petition in MCOP 2342/2010 has been enhanced to Rs. 1,26,500/- from Rs. 76,500/-. The Appellant Insurance Company is directed to deposit the award amount in respect of all the claim petitions with interest at 7.5% p.a. & cost if not deposited earlier within a period of four weeks from the date of receipt of a copy of this order.
- 20. On such deposit being made the Claimants are entitled to get the entire award amount directly from the Tribunal without actually filing any petition seeking permission.

Sd/-

Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

GPA

TO

V Judge,
Court of Small Causes,
Motor Accident Claims Tribunal,
Chennai.

+1cc to Mr.Anand & Surya, Advocate SR.No.46595

C.M.A. Nos. 459/2015 & 1850, 1851,
1852 & 1853/2015

MP (CO)
GN(14/12/2017)