

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :14.11.2016

Pronounced on :15.12.2016

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.Nos.2451 of 2010

C.M.A. No. 56 of 2011

and

MP No.1 of 2011

V.Mathi@ V.Mathiazhagan

... Appellant in C.M.A. No.2451 of 2010/Petitioner

The Branch Manager,  
The Oriental Insurance Company Ltd.  
No.75, Krishnan Street,  
Tiruvannamalai

... Appellant in C.M.A.No.56 of 2011  
/2nd Respondent

Versus

1. C.Velusamy
2. The Branch Manager,  
The Oriental Insurance Company Ltd.  
No.75, Krishnan Street,  
Tiruvannamalai.

... Respondents in C.M.A.No.2451 of  
2010/Respondents

1.V.Mathi alias Mathiazhagan ...1st Respondent/Claimant

2.C.Velusamy

...2nd Respondents in C.M.A.No.56 of  
2011/1st Respondent

Prayer in C.M.A.No.2451 of 2010 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decretal order in M.C.O.P.No.591 of 2006 on the file of Principal Subordinate Judge, Motor Vehicle Accident Tribunal, Tiruvannamalai, dated 17.08.2009.

Prayer in C.M.A.No.56 of 2011 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 17.08.2009 passed in M.C.O.P. No.591 of 2006 on the file of the Principal Subordinate Judge Motor Accident Claims Tribunal, Tiruvannamalai / Principal Subordinate Judge's Court, Tiruvannamalai.

For C.M.A.No.2451 of 2010

Appellant : Mr.V.Raghavachari  
Respondents : R1 Dispensed with  
Mr.R.Sivakumar for R2

For C.M.A.No.56 of 2011

Appellant : Mr.R.Sivakumar  
Respondents : Mr.V.Raghavachari for R1

#### COMMON JUDGEMENT

Both these appeals arise out of the award dated 17.08.2009 in M.C.O.P No.591 of 2006 on the file of the Motor Accidents Claims Tribunal, Tiruvannamalai. While CMA No.2451 of 2010 was filed by the claimant seeking enhancement of compensation, CMA No.56 of 2011 has been filed by the insurance company questioning the quantum of compensation awarded by the Tribunal in favour of the claimant. As both these appeals arise out of one and the same award passed by the Tribunal, for the purpose of disposal of these appeals, the parties are referred to as claimants and the insurance company respectively.

2. M.C.O.P.No.591 of 2006 has been filed by the claimant seeking compensation of Rs.5,00,000/- for the injuries sustained by him in the motor accident that took place on 25.11.2003 at 7.50 A.M. According to the claimant when he was travelling as a pillion rider in the motor cycle - LML Adreno bearing Registration No.TN25 D2801, at that time, the vehicle - TVS moped bearing Registration No.TN 01 R 0580 came in the opposite direction and it was driven by it's driver in a rash and negligent manner and thereby caused the accident. According to the claimant, it is the Driver of the TVS Moped, who is responsible for the accident. It is further stated that at the time of accident, the claimant was studying B.E. (Mechanical) Engineering at Tiruvallur Engineering College of Technology at Vandavasi, Tiruvannamalai District. By reason of injuries sustained by him, he was hospitalized for long time and incurred heavy expenditure for the treatment. It was specifically contended that the claimant sustained serious injuries on the right side maxillary region from lower lid to right upper lip across the nose. He also sustained lid to right upper lip across the nose and also lacerated injuries on his right fore head. He also sustained injuries on his left ear lobule lay and fracture and loss of four teeth. Therefore, the claimant claimed a compensation of Rs.5,00,000/-.

3. The insurance company recited the claim petition by contending that the injuries stated to have been sustained by the claimant are not severe in nature. The claimant was admittedly studying in a college and therefore the question of loss of earning capacity does not arise.

4. The Tribunal upon considering the oral and documentary evidence passed an award holding that since the claimant sustained 20% injury a sum of Rs.48,000/- shall be awarded as compensation towards permanent disability. The Tribunal has also awarded a sum of Rs.5,000/- each towards (i) pain and sufferings and (ii) Transportation and extra nourishment respectively. Apart from these, the Tribunal has awarded a sum of Rs.5,680/- towards medical expenses, which are based on medical records in Ex.P.11. Aggrieved by the award passed by the Tribunal, these appeals are filed, as mentioned above.

5. The learned counsel appearing for insurance company would contend that admittedly, the claimant was a student pursuing his engineering degree at the time of accident. Therefore, the sum of Rs.63,680/- awarded by the Tribunal is excessive and it is liable to reduced.

6. The learned counsel appearing for the claimant would vehemently contend that the claimant has admittedly sustained fracture injuries for which he has taken treatment in the hospital. The medical expenses incurred by the claimant was awarded by the Tribunal on the basis of medical bills produced by him. The sum of Rs.5,000/- towards pain and sufferings and transportation and extra nourishment each is meagre and at any rate the amount awarded by the insurance company cannot be said to be excessive and prayed for enhancement of the compensation amount.

7. I heard the learned counsel for the either side and also the materials placed on record.

8. The insurance company is not questioning the liability to pay the compensation. The insurance company only questioned the quantum of compensation awarded by the Tribunal. Thus, the insurance company admits the date, time and the manner in which the accident occurred. In the accident, the claimant admittedly sustained grievous injuries including fracture. Immediately after the accident, the claimant was admitted in CMC hospital for treatment. Thereafter, the claimant has also taken treatment in a private hospital. It is further stated that the claimant at the time of accident was a student studying in an engineering college. In the impact of the accident, he sustained disfigurement on his face. Therefore, the Tribunal ought to have awarded more amount as compensation.

9. The insurance company is not questioning the liability to pay the compensation amount, but only questioning the quantum of compensation awarded in favour of the claimant. At the time of accident, the claimant was 19 years and he was pursuing his engineering degree. The claimant sustained serious fracture injuries and taken treatment in both private and Government Hospital. Of course, the medical expenses incurred by the claimant has been ordered to be reimbursed by the insurance company as per the medical bills produced before the Tribunal. As regards, the permanent disability, the claimant sustained disfigurement, especially when he was a college student at the age of 19 years. This would have caused enormous mental agony to the claimant and consequently and it would deprive him from attending the college for a considerable length of time. Taking into consideration the above aspect, the Tribunal ought to have awarded atleast a sum of Rs.60,000/- as against the sum of Rs.48,000/- awarded by it, even though there is no records to show the earning capacity of the claimant. In such view of the matter, I am of the view that the claimant is entitled for the following amount :

|                                                  |   |              |
|--------------------------------------------------|---|--------------|
| Permanent Disability (lump sum)                  | : | Rs.60,000/-  |
| Pain and sufferings                              | : | Rs.10,000/-  |
| Extra Nourishment                                | : | Rs. 5,000/-  |
| Transportation                                   | : | Rs. 5,000/-  |
| Medical expenses (as awarded by<br>the Tribunal) | : | Rs. 5,680/-  |
| Total                                            | : | Rs. 85,680/- |

10. In the result, the appeal filed by the insurance company is dismissed while the appeal filed by the claimant is allowed determining the compensation amount payable by the insurance company to the claimant at Rs.85,680/- with interest as determined by the Tribunal. The insurance company is directed to deposit the enhanced compensation with interest within a period of twelve weeks from the copy of the receipt of this Judgment. Consequently, connected Miscellaneous Petition is also closed.

Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Principal Subordinate Judge's Court, Tiruvannamalai  
Motor Accident Claims Tribunal, Tiruvannamalai.

Copy to

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

+1cc to Mr.R.Sivakumar, Advocate Sr.73144

+2cc to Mr.V.Raghavachari, Advocate SR.73073, 73074

in C.M.A.Nos.2451 of 2010 and  
C.M.A. No. 56 of 2011

ssi[col]  
srg 2/3/2017



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