

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.11.2016

CORAM: THE HON'BLE Mr. JUSTICE N.SESHASAYEE

C.M.A.No.665 of 2009

S.Parandaman

... Appellant

Vs

1. G.Natarajan
2. M/s.New India Assurance Company Ltd.
C/o. Motor Third Party Claims Offices,
No.43, Moore Street, Chennai - 1. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgement and Decree made in MCOP No.4556 of 2002 on the file of Motor Accident Claims Tribunal, Chennai / Additional District and Sessions Court Fast Track V Court, Chennai dated 31.03.2008.

For Appellant : Mr.T.G.Balachandran

For Respondents : R1 - Exparte
Mr.C.Ramesh Babu for R2

J U D G M E N T

The claimant in M.C.O.P. No.4556 of 2002 on the file of Motor Accident Claims Tribunal, (Additional District and Sessions Fast Track Court - V) Chennai) is the appellant before this Court and he seeks enhancement of the award for the injury he has sustained in a road accident.

2. On 28.03.2002, when the claimant/appellant was riding his motor cycle he met with an accident when another motor cycle bearing No.TN 22 P 6378 came from the opposite direction and dashed on his motor cycle. The accident took place at Nemilichery Road, Royapettah. In the said accident, the appellant sustained head injury, fracture of his nasal bone, fracture to left maxilla and multiple injuries all over the body. He was treated as an inpatient in Balaji Hospital from 04.04.2002.

3. Claiming compensation on various heads of pecuniary and general damages, the claimant approached the Motor Accidents Claims Tribunal and sought a compensation of Rs.1,50,000/- as

against which the Tribunal passed an award for Rs.55,000/-. The breakup of the amount claimed under various heads and the amount awarded is tabulated below :-

Heads	Amount Awarded (in Rs)	Amount Claimed (in Rs)
Loss of earning	30,000/-	5,000/-
Transport to hospital	5,000/-	5,000/-
Extra Nourishment Charges	8,000/-	
Damage to clothing & articles	500/-	
Cost of purchase of medicine	15,000/-	
Cost of pvt. treatment	10,000/-	30,000/-
Compensation for pain and suffering	10,000/-	10,000/-
Permanent Disability	50,000/-	10,000/-
Loss of earning power	50,000/-	Nil
	1,78,500/- (rest ricted to Rs.1,50,000/-)	55,000/-

4. Introducing the appellant as a young man of 28 years and as one running a provision shop then, the learned counsel for the appellant argued that even a cursory look at the amounts awarded by the Tribunal shows that nothing has been granted on conventional heads such as transport, extra nourishment etc. He added that PW2 the doctor, who examined the appellant has assessed his permanent disability especially to his jaw at 20%. He was categorical when he opined that the appellant would have difficulty in moving his jaw which is essential for chewing. However, the Tribunal has awarded only a consolidated amount of Rs.10,000/-, which appears both unjust and unreasonable. An evidence of an expert should not be easily rejected by the Tribunal more so when there is no contra evidence to negate the evidentiary value of the doctor.

5. Per contra, the learned counsel for the respondent submitted that PW2, the Doctor, who issued Ext-P.12, disability certificate has examined the claimant five years after the accident and the Tribunal has taken note of this fact. Besides,

the Tribunal has also observed that the appellant has not examined any dentist who in its opinion will be in a better position to speak about the consequence of the injury suffered to the lower jaw.

6. On perusing the records I find that PW2 has determined the disability of the claimant at 20% to the lower jaw and the after effect of this injury is stated to be difficulty in chewing. This can be a perennial botheration for chewing as an activity is indispensable to very human existence. Given the area where the injury is and the frequency of its use, an award of Rs.10,000/- is inadequate and it is enhanced to Rs.40,000/-. Pain and suffering too needs an enhancement from Rs.10,000/- to 15,000/-. For transport to hospital Rs.2,500/- is awarded and for additional nourishment Rs.5,000/- is provided. The final figure of compensation awarded on various heads are as below :-

Heads	Award (in Rs)	Enhanced Award (in Rs)
Loss of earning	5,000/-	5,000/-
Transport to hospital	5,000/-	2,500/-
Extra Nourishment Charges	-	5,000/-
Cost of treatment including medicines	30,000/-	30,000/-
Compensation for pain and suffering	10,000/-	15,000/-
Permanent Disability	10,000/-	40,000/-
Total	55,000/-	97,500/-

7. Thus appeal is allowed to the extent indicated above. No costs. Both the respondents are directed to pay jointly or severally the enhanced compensation amount less the amount, if any, already deposited in the Court with interest at 9% p.a. within six weeks from the date of receipt of copy of this order. The claimants will be entitled to withdraw the amount forthwith.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Additional District and
Sessions Judge, Fast Track V Court,
Chennai.
(Motor Accident Claims Tribunal)

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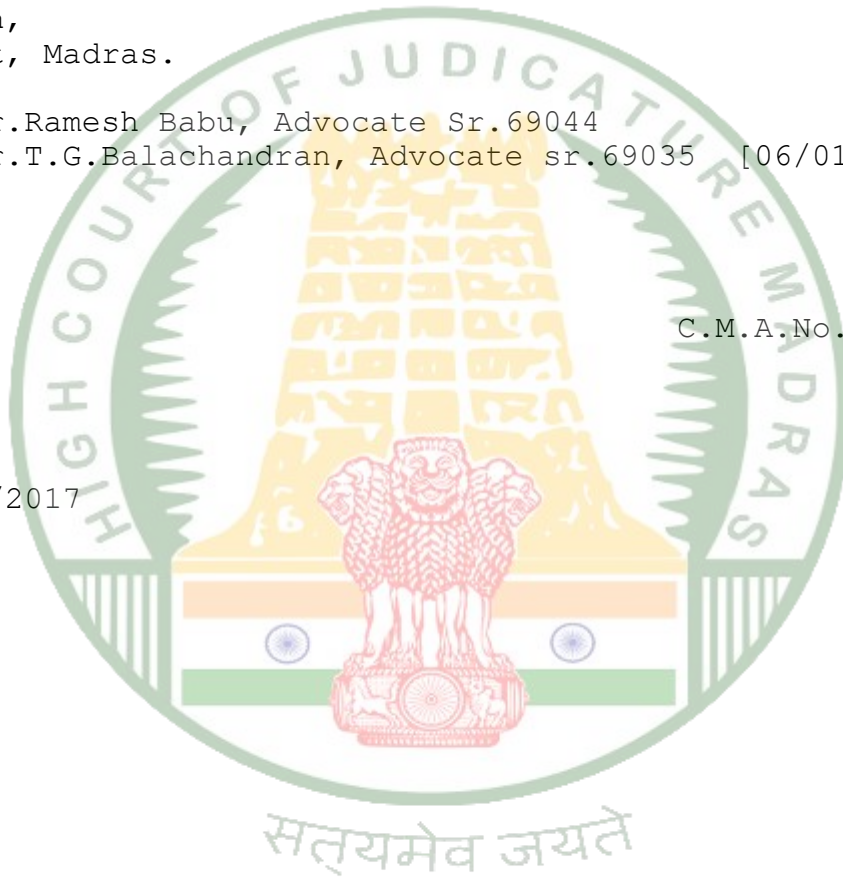
The Section Officer,
VR Section,
High Court, Madras.

+lcc to Mr.Ramesh Babu, Advocate Sr.69044

+lcc to Mr.T.G.Balachandran, Advocate sr.69035 [06/01/2017]

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