

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2016

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.2549 of 2003

Sekar

... Appellant/Claimant

. Vs .

1.Gopi

2.The New Indian Assurance Co. Ltd.,  
No.770-A, Spencer Towers,  
Mount Road, Chennai - 2. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 18.07.2002 made in M.C.O.P.No.1940 of 1987 on the file of the Motor Accidents Claims Tribunal, (VI Judge, Court of Small Causes) at Chennai.

For Appellant : Mr.J.Mahalingam

For R-1 : Ex-parte

For R-2 : Mr.M.Krishnamoorthy

JUDGMENT

This civil miscellaneous appeal is directed against the judgment and decree dated 18.07.2002 made in M.C.O.P.No.1940 of 1987 on the file of the Motor Accidents Claims Tribunal, (VI Judge, Court of Small Causes) at Chennai.

2. The appellant as a claimant has filed a claim petition in M.C.O.P.No.1940 of 1987 before the learned VI Judge, Court of Small Causes, Motor Accidents Claims Tribunal, Chennai, for the injuries sustained by him against the respondents herein. The Tribunal, after considering the oral and documentary evidence adduced on the side of the claimant, awarded a sum of Rs.45,000/- towards compensation to the claimant. Being not satisfied with the compensation amount awarded by the Tribunal, the claimant had preferred this appeal before this Court seeking enhancement of compensation.

3. The learned counsel appearing for the appellant/claimant would mainly contend that the Tribunal,

without considering the evidence of P.W.1/claimant and also the evidence of P.W.2/Doctor regarding the nature of injuries sustained by the claimant and the disability suffered by him, awarded a meager amount for damages. It is further contended that the Tribunal has awarded a sum of Rs.20,000/- towards permanent disability and the said amount has to be enhanced. Further, the Tribunal has awarded a sum of Rs.14,000/- towards loss of earning power and Rs.5,000/- towards pain and sufferings which are too low and therefore, the compensation has to be enhanced. It is also contended that the Tribunal has not assessed the permanent disability and as per the disability certificate/Ex.P.4 given by the Doctor/P.W.2, the Tribunal ought to have awarded just and reasonable compensation under the heads of permanent disability, loss of earning power, pain and sufferings, loss of amenities and also on the other heads. Since, the quantum of compensation awarded by the Tribunal is too low, the learned counsel for the appellant/claimant prayed that the compensation awarded by the Tribunal has to be enhanced as prayed for in the petition.

4. The learned counsel appearing for the second respondent/insurance company would mainly contend that the Tribunal, after considering the oral and documentary evidence adduced on the side of the claimant, awarded just compensation of Rs.45,000/- and therefore, there is no necessity to enhance the compensation amount and hence, the learned counsel submitted that there is no illegality or infirmity or perversity in the award passed by the Tribunal and therefore, the award passed by the Tribunal has to be confirmed and the civil miscellaneous appeal has to be dismissed.

5. This Court has considered the submissions made by the learned counsel appearing for the appellant/claimant and the learned counsel appearing for the second respondent/insurance company and perused the entire records.

6. In this case, on the application filed by the appellant/claimant claiming compensation under the following heads as stated in column 21(a)(1), the Tribunal, after considering the entire evidence and documents, awarded compensation as per column 21(a)(2) which reads as follows:-

21.(a) Particulars of loss and expenses

| PART<br>I | Heads                                            | (1) Amount<br>claimed in the<br>claim petition | (2) Amount<br>awarded by<br>the Tribunal |
|-----------|--------------------------------------------------|------------------------------------------------|------------------------------------------|
| (a)       | Loss of earning from<br>01.09.1987 to 14.09.1987 | Rs. 200/-                                      | Rs. 200/-                                |
| (b)       | Transport to hospital                            | Rs. 7,800/-                                    | Rs. 800/-                                |
| (c)       | Extra nourishment                                | Rs. 5,000/-                                    | Rs. 1,000/-                              |
| (d)       | Damage to clothing and<br>articles               | Rs. Nil                                        | -                                        |

| PART<br>I | Heads                                                                                                                                 | (1) Amount<br>claimed in the<br>claim petition | (2) Amount<br>awarded by<br>the Tribunal |
|-----------|---------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|------------------------------------------|
| (e)       | Others.<br>I. Pecuniary Damages                                                                                                       |                                                |                                          |
|           | 1) Medical Expenses                                                                                                                   | Rs. 1,000/-                                    | -                                        |
|           | 2) Medical attendance                                                                                                                 | Rs. Nil                                        | -                                        |
|           | 3) Future loss of earnings for 2 months from 15.9.1987                                                                                | Rs. 5,000/-                                    | Rs. 2,000/-                              |
|           | 4) Other material loss                                                                                                                | Rs. Nil                                        | -                                        |
|           | II. Non Pecuniary Damages                                                                                                             |                                                |                                          |
|           | 5) Dis figuration of face                                                                                                             | Rs. Nil                                        | -                                        |
|           | 6) Damages for mental physical shock, pain and suffering already suffered or likely to be suffered in future                          | Rs. 10,000/-                                   | Rs. 1,000/-                              |
|           | 7) Damages to compensate for the loss of amenities of life due to permanent disablement                                               | Rs. 15,000/-                                   |                                          |
|           | 8) Damages for the loss of expectation of life (i.e. on account of injury, the normal longevity of the person concerned is shortened) | Rs. Nil                                        |                                          |
|           | 9) Inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life                                         | Rs. 15,000/-                                   | Rs. 1,000/-                              |
|           | PART - II                                                                                                                             |                                                |                                          |
| (f)       | Compensation for pain and suffering                                                                                                   | Rs. 21,000/-                                   | Rs. 5,000/-                              |
| (g)       | Compensation for continuing of permanent disability if any                                                                            | Rs. 70,000/-                                   | Rs. 20,000/-                             |
| (h)       | Compensation for the loss of earning power                                                                                            | Rs. 50,000/-                                   | Rs. 14,000/-                             |
|           | Total                                                                                                                                 | Rs.2,00,000/-                                  | Rs. 45,000/-                             |

7. In this case, on the side of the claimant, Doctor was examined as P.W.2. The Doctor/P.W.2 examined the claimant and fixed the disability at 35% and issued disability certificate/Ex.P.4 and the X-ray taken by the Doctor is marked as Ex.P.5. Considering the nature of injury and the disability suffered by the claimant, this Court is of the considered view that the compensation awarded by the Tribunal under the above stated heads is too low and hence, the compensation awarded by the Tribunal has to be enhanced as follows:-

| Sl. Nos. | Heads                                         | Amount awarded by the Tribunal | Amount granted by this Court |
|----------|-----------------------------------------------|--------------------------------|------------------------------|
| 1.       | Loss of earning from 01.09.1987 to 14.09.1987 | Rs. 200/-                      | Rs. 1,000/-                  |
| 2.       | Transport to hospital                         | Rs. 800/-                      | Rs. 1,000/-                  |
| 3.       | Extra nourishment                             | Rs. 1,000/-                    | Rs. 2,000/-                  |
| 4.       | Loss of future earnings                       | Rs. 2,000/-                    | Rs. 6,000/-                  |
| 5.       | Loss of mental agony                          | Rs. 1,000/-                    | Rs. 4,000/-                  |
| 6.       | Pain and sufferings                           | Rs. 5,000/-                    | Rs. 10,000/-                 |
| 7.       | permanent disability                          | Rs. 20,000/-                   | Rs. 40,000/-                 |
| 8.       | Loss of earning power                         | Rs. 14,000/-                   | Rs. 25,000/-                 |
| 9.       | Loss of Amenities                             | Rs. 1,000/-                    | Rs. 1,000/-                  |
|          | Total                                         | Rs. 45,000/-                   | Rs. 90,000/-                 |

8. Considering the above, this Court is of the considered view that the compensation awarded by the Tribunal is enhanced to Rs.90,000/- from Rs.45,000/-.

9. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is enhanced to Rs.90,000/- from Rs.45,000/-. The second respondent/insurance company is directed to deposit the modified award amount of Rs.90,000/- with interest at 9% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. The appellant/claimant is entitled to withdraw the modified award amount deposited on due application. No costs.

Sd/-  
Assistant Registrar(CCC)

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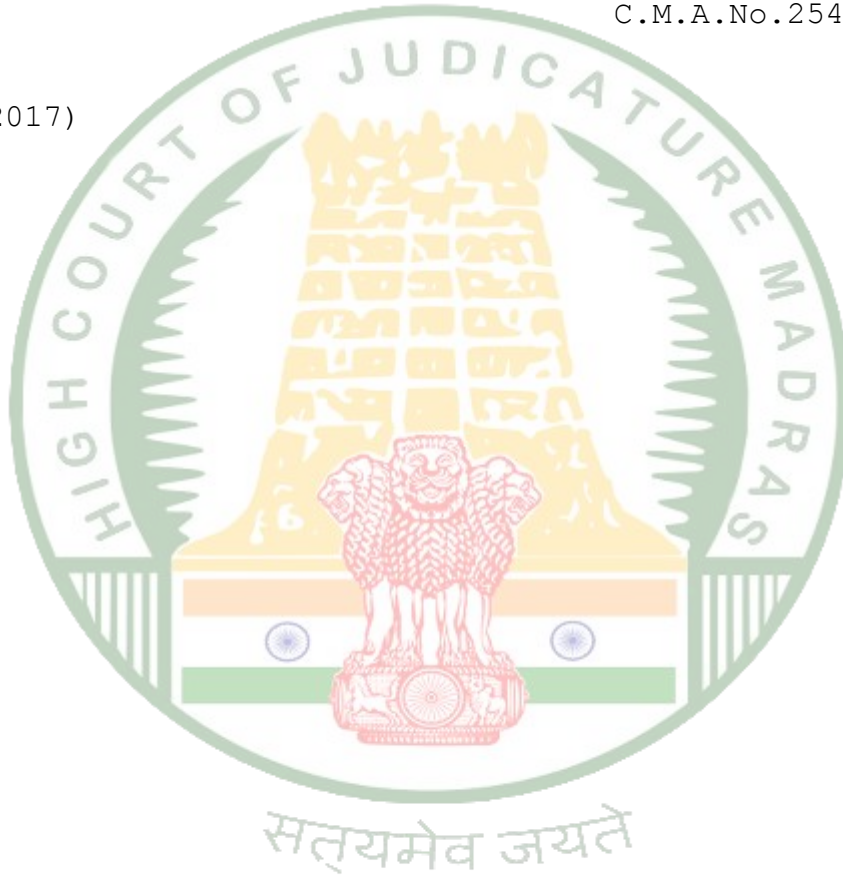
To

The VI Judge, Court of Small Causes,  
Motor Accidents Claims Tribunal,  
Chennai.

+lcc to Mr.M.krishnamoorthy, Advocate, S.R.No.74968

C.M.A.No.2549 of 2003

EV(CO)  
CA(13/04/2017)



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