

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.03.2017

CORAM

THE HONOURABLE MS. JUSTICE PUSHPA SATHYANARAYANA

C.M.A. No. 80 of 2017

National Insurance Co., Ltd.,
T.P.Cell, 3rd Floor, No.751,
Anna Salai, Chennai-600 002 Appellant/2nd Respondent

vs

1. Manimozhi Respondent/Petitioner
2. Arul Industries
No.3/171, Tankasi Road,
Ideal Nagar, Vellalankulam,
Tirunelveli. 1st Respondent/Respondent

Appeal filed under Section 173 of Motor Vehicle Accidents Claims Tribunal against the order dated 01.02.2016 made in M.C.O.P. NO 3927 of 2012 on the file of the Motor Accidents Claims Tribunal, 2nd Court of small causes, Chennai.

For Appellant : Mr. Arunkumar
For Respondents: Mr. K.V. Muthuvisakan (R1)

J U D G M E N T

Challenging the quantum of compensation awarded by the Claims Tribunal, II Court of small Causes, Chennai, in M.C.O.P.No.3927 of 2012, on 01.02.2016, the Insurance Company has preferred this Civil Miscellaneous Appeal.
Brief Facts:-

On 05.05.2012, at about 10.30 hours, while the claimant was riding the Honda Activa bearing Regn.No.TN-05-AJ-4489, a motor cycle bearing Registration No.TN-72-P-5910 came from the opposite direction, in a rash and negligent manner and dashed against the claimant, due to which, she sustained grievous injuries. Hence, she filed a claim petition in M.C.O.P.No.3927 of 2012, before the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai. The tribunal, on consideration of oral and documentary evidence has awarded a sum of Rs. 3,10,000/- with interest @ 7.5% per annum from the date of petition till the date of deposit. The break-up details of the same are as under:

Transportation, nourishing food and miscellaneous expenditure	-	Rs. 50,000/-
Medical expenses	-	Rs. 30,000/-
Attender charges	-	Rs. 2,000/-
Damages for pain, suffering and trauma	-	Rs. 50,000/-
Disability	-	Rs.1,05,000/-
Loss of earning during the period of treatment	-	Rs. 48,000/-
Loss of amenities	-	Rs. 25,000/-

Total		Rs.3,10,000/-

3. Challenging the quantum of compensation, this Civil Miscellaneous Appeal is filed.

4. The learned counsel appearing for the insurance company would submit that the injuries sustained by the claimant is only a fracture in her toe which was made alright after the surgery. The disability as per the schedule of the workman Compensation Act is only 3%/- for even removal of the toe. But, in the case on hand, it is only a minor fracture which was set right by fixing 'K' wire and the same was subsequently removed. Therefore, the Counsel appearing for the Insurance Company/appellant would contend that the percentage of disability fixed by the tribunal is too high for the partial permanent disability sustained by the claimant and the amount of compensation awarded under other heads were also seriously opposed by the appellant on the ground that they are disproportionate to the injuries and treatment taken by the claimant.

5. This Court has considered the submissions made by the learned counsel appearing on either side and also perused the documents on record.

6. A perusal of the award would go to show that as per the evidence of P.W.2-Doctor, the claimant had suffered a fracture of 4/5th Phalanx of right foot and hematoma in the right fronto temporal region. Further, the fracture is malunited and the claimant is having difficulty in walking/climbing steps/squatting and head ache and ugly scar over right leg for which he assessed disability @ 30% for first injury and 5% for second injury. He has also issued Ex.P8-Disability certificate.

7. It is seen that the tribunal had granted a sum of Rs.50,000/- towards transportation, nourishing food and miscellaneous expenses which is on the higher side. Hence, this Court deems it fit to grant a sum of Rs.15,000/- towards transportation, nourishing food and miscellaneous expenses. Accordingly, a sum of Rs.15,000/- is awarded towards transportation, nourishing food and miscellaneous expenses.

8. In so far as Medical expenses is concerned, it is seen that a sum of Rs.30,000/- is awarded by considering the medical bills-Ex.P5. As per Ex.P5- the amount comes to Rs.25,356/- and the tribunal has rounded off the same to Rs.30,000/-. Hence, the amount awarded towards Medical expenses need not be revised.

9. In so far as Pain and suffering is concerned, the tribunal has awarded a sum of Rs.50,000/-, which is on the higher side. For a small fracture, the tribunal has awarded such a huge sum. Therefore, the amount awarded towards Pain and suffering is reduced to Rs.25,000/-

10. In so far as the amount awarded under the head disability is concerned, the tribunal has assessed the disability at 35%, whereas the learned counsel for the appellant would say that it is only 3%, even for the removal of toe, as per the schedule. However, considering the fact that the claimant was a unmarried woman, on the date of accident and the surgery was done, the disability was taken at 30% at Rs.2,000/- per percentage and a sum of Rs.60,000/- was awarded towards Disability.

11. The Claimant was stated to be an employee in the private Company and earning a sum of Rs.20,000/- . Whereas, the tribunal calculated it as Rs.12,000/- and awarded loss of earnings for four months i.e. Rs.48,000/-. There is no evidence to show that she was not paid salary for four months. In such circumstances, taking a sum of Rs.10,000/- per month, as her salary, loss of earnings is calculated for two months, which comes to Rs.20,000/- and hence a sum of Rs.20,000/- is awarded under the head Loss of earnings.

12. The injuries sustained does not cause any loss of amenities to the claimant. However, the claimant has to be equally compensated . Hence, a sum of Rs.15,000/- is awarded under the head of Loss of marriage prospects, since no amount was awarded by the tribunal towards Loss of marriage prospects.

13. In the result, the compensation is reduced from Rs.3,10,000/- to Rs.1,62,000/-, under the following heads:

Transportation, nourishing food and miscellaneous expenditure	-	Rs. 15,000/-
Medical expenses	-	Rs. 30,000/-
Attender charges	-	Rs. 2,000/-
Damages for pain, suffering and trauma	-	Rs. 25,000/-
Disability	-	Rs. 60,000/-
Loss of earning during the period of treatment	-	Rs. 20,000/-
Loss of amenities	-	Rs. 15,000/-

Total		Rs.1,62,000/-

14. The compensation amount shall carry interest @ 7.5% per annum, from the date of petition, till the date of deposit. The Insurance Company is directed to deposit the compensation amount, within a period of four weeks from the date of receipt of a copy of this order and on such deposit, the claimant is permitted to withdraw the same. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

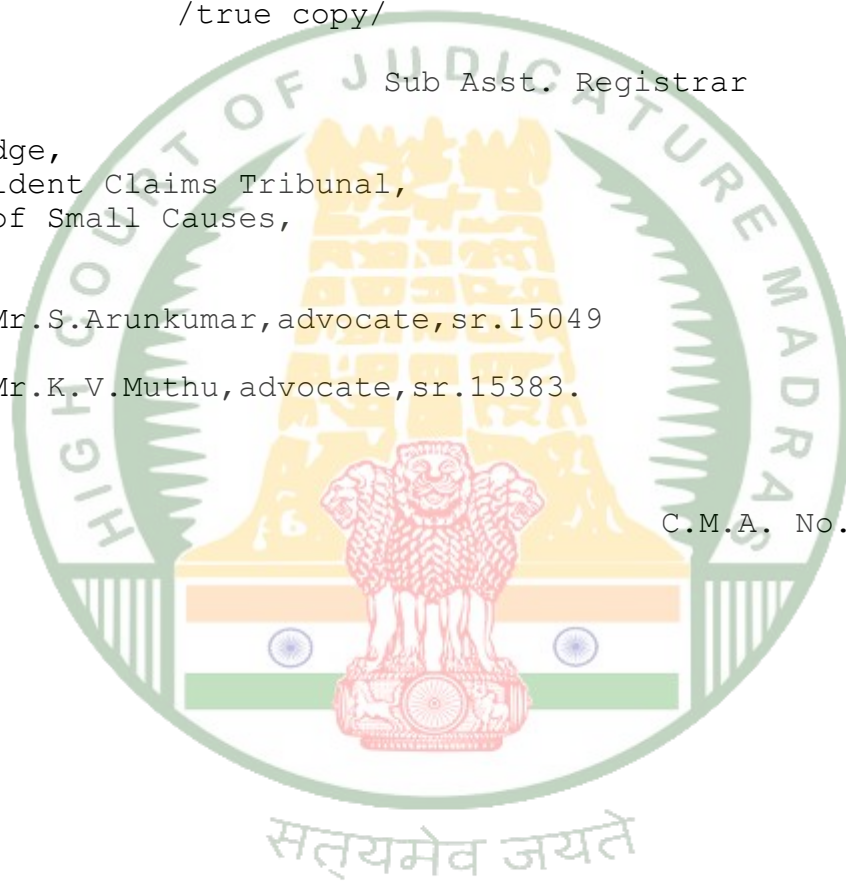
To
The II Judge,
Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.

+1 cc to Mr.S.Arunkumar, advocate, sr.15049

+1 cc to Mr.K.V.Muthu, advocate, sr.15383.

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C.M.A. No.80 of 2017



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