

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 22.11.2018

DELIVERED ON 28.11.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.3200 of 2010 and  
CMA No.718 of 2011 and  
M.P.No.1 of 2011

In CMA No.3200 of 2010

A.P.Prasanna Venkatesh .... Appellant /Claimant

Vs.

1. Mr.R.M.Ramasamy  
(R1 was set exparte in the trial court)

2. National Insurance Company Limited,  
Motor Third Party Claims Office,  
No.751, Anna Salai, Chennai-2.  
... Respondents/Respondents

In CMA No.718 of 2011

National Insurance Co. Limited,  
751 Anna Salai,  
Chennai-2. ... Appellant/2nd respondent

Vs.

1. A.P.Prasanna Venkatesh ... 1st respondent/Claimant  
2. R.M.Ramasamy ... 2nd respondent/1st respondent

Prayer in CMA No.3200 of 2010 This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the quantum of compensation awarded in M.C.O.P.No.5111 of 2004 dated 24.02.2010 passed by the V Judge, Motor Vehicle Accidents Claims Tribunal, Court of Small Causes, Chennai.

Prayer in CMA No.718 of 2011 This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles

Act, 1988, against award passed in M.C.O.P.No.5111 of 2004 dated 24.02.2010 by the V Judge, Motor Vehicle Accidents Claims Tribunal, V Court of Small Causes, Chennai.

In CMA 3200 of 2010

For Appellant : Mr.R.Anandhan  
for M/s C and K Law firm

For 2nd respondent : Mr.D.Bhaskaran

First respondent : Exparte

In CMA 718 of 2011

For Appellant : Mr.D.Bhaskaran

For 1st respondent : Mr.R.Anandhan  
for M/s C and K Law firm

Second respondent : Exparte

#### COMMON JUDGMENT

1. This Memorandum of Appeal (CMA No.3200 of 2010) under Section 173 of the Motor Vehicles Act, 1988 is filed by the appellant/claimant against the quantum of compensation awarded in MCOP No.5111 of 2004 by the V Judge, Motor Accidents Claims Tribunal, Court of Small Causes, Chennai seeking enhancement of the compensation awarded.

2. This Memorandum of Appeal (CMA No.718 of 2011 under Section 173 of the Motor Vehicles Act, 1988 is filed by the appellant/2nd respondent against award passed in MCOP No.5111 of 2004 by the V Judge, Motor Accidents Claims Tribunal, Court of Small Causes, Chennai.

3. The appeal in CMA 718 of 2011 was filed by the Insurance Company on the ground that (i) the compensation awarded was abnormally high, (ii) the first respondent had not proved that the driver had a valid driving licence and (iii) the recourse to 'pay and recover' had to be adopted in this case, as the first respondent cannot be absolved of his liability for his lapses.

4. Both the appeals are dealt with in this common judgment.

5. Briefly the sequence of the events leading to the accident and the aftermath as narrated by the claimant in MCOP No.5111 of 2004. The appellant/claimant was riding a motorcycle

bearing registration No. TN 10 A5500 on the Taramai 100 feet road, where a speeding lorry bearing registration No. TN 07 C 7995 hit the motorcycle from behind causing grievous injuries to the claimant. The accident is directly attributable to the driver of the lorry for his reckless and negligent doing and the first respondent being the owner of the lorry and the 2nd respondent being the insurer are jointly and severally liable to pay the compensation to the appellant/claimant. The injuries caused to the appellant was so grievous causing multiple fracture in the pelvic region, rectal and urinary system getting totally damaged and other lacerations and injuries all over the body. The pelvic area had to be internally fixed. The appellant/claimant was just 23 years old then. He had to undergo many surgeries to get his system in place.

6. The learned counsel for the 2nd respondent had contended that the absence of the driving licence or valid permit was fatal to the first respondent and therefore, the liability of the 2nd respondent is restricted. Moreover, even assuming that the claimant was eligible for a compensation, the amount awarded by the trial court was on the higher side.

7. The trial court after analysing all the documentary evidence as to the nature of injuries, the extent of danger to the claimant, the circumstances of the accident, the counter point of the 2nd respondent and also the deposition of the witnesses, concluded that the award would be Rs.8,06,000/- summing up the compensation under different eligible heads.

8. This quantum has been challenged by the claimant in the appeal in CMA 3200 of 2010 for enhancement and for reduction and ' pay and recover ' by the 2nd respondent in CMA No.718 of 2011.

9. As regards the quantum of award, this court after looking into the bleak future of the claimant with a near irrevocable damage to the urinary and other excretory organs, finds the quantum of Rs.8,06,000/- as grossly inadequate and low. The age of the victim was just 23 years at the time of the accident and he was already employed part time in United Kingdom, while studying (which is common). Similarly, not only his future career prospects, but also his revival prospects, the mental agony he has undergone, his marriage prospects and his very living a peaceful and healthy life becomes a question mark. Therefore, I am inclined to treat this as a very special case and arrive at the award as follows.

10. The multiplier method adopted by the trial court is perfectly correct, except for the multiplier factor of 17, which is to be taken as 18, as per the decision in Sarla Verma

and others Vs. Delhi Transport Corporation in Civil Appeal No.3483 of 2008 in the Apex Court. Besides, as per the decision of the Constitution Bench of the Apex Court in National Insurance Company Vs. Pranay Sethi reported in 2017(2) TN MAC 601, 40% towards future prospects has to be added in the income of the claimant.

11. Therefore, the revised award is as follows.

| Sl. No | Heads                                                                                        | Amount in Rs. |
|--------|----------------------------------------------------------------------------------------------|---------------|
| 1      | Permanent disability [(15000 +40/100) x 18 x 12 x 80/100]<br>21000x18x12x 80/100 = 36,28,800 | 36,28,800     |
| 2      | Medical Expenses                                                                             | 1,00,000      |
| 3      | Loss of amenities                                                                            | 25,000        |
| 4      | Transportion charges                                                                         | 25,000        |
| 5      | Extra Nourishment                                                                            | 60,000        |
| 6      | Pain and sufferings                                                                          | 1,50,000      |
| 7      | Loss of marriage prospects                                                                   | 1,00,000      |
| 8      | Future Medical Expenses                                                                      | 1,00,000      |
|        | Total                                                                                        | 41,88,800     |

12. As regards the appeal in CMA No.718 of 2011 is concerned, the appellant/ Insurance Company has deposited the quantum of award, which has been elaborately dealt by this court already. The other contentions of the learned counsel for the appellant /Insurance Company is the non production of the driving licence by the first respondent. Though the Insurance Company has issued notice to the first respondent, there is no record of any notice to the driver of the vehicle and therefore, no adverse inference can be drawn against the driver. Similarly, the non examination of the R.T.O. in the trial court by the Insurance Company regarding the possession of the driving licence is also fatal to this contentions of the Insurance Company. Since the insurance company has not proved that the driver of the offending vehicle did not have a valid driving licence, no "pay and recovery " can be awarded in the instant case.

13. In the result,

(i) The appeal in C.M.A.No.3200 of 2010 is allowed and the appellant/ claimant is entitled to a compensation of Rs.41,88,800/- together with interest at the rate of 7.5% p.a. on Rs.40,88,800/- from the date of claim petition till the date of deposit. No interest is awarded for Rs.1,00,000/- (future medical expenses).

(ii) The appellant in C.M.A.No.3200 of 2010 is directed to pay the necessary court fee for the enhanced compensation amount.

(iii) The Insurance Company is directed to deposit the award amount along with interest, within a period of 4 weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the Insurance Company, the claimant is entitled to withdraw the same, after following due process of law.

(v) The appeal in C.M.A.No.718 of 2011 is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mst

To

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

+1cc to M/s C and K Law firm, Advocate, S.R.No.81291

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.81261

CMA.No.3200 of 2010 and  
C.M.A.No.718 of 2011 and  
M.P.No.1 of 2011

VD(CO)  
CS/28/03/2019

सत्यमेव जयते

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