

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.No.2419 of 2015

Darani Bai @ Darani

... Appellant/Petitioner

Vs

1.S.Krishnapriya

(R1 remained exparte before the Tribunal hence his presence may be dispensed with)

2.Cholamandalam MS General Insurance Company Limited,
Dare House, II Floor,
New No.2, Old No.234,
NSC Bose Road,
Chennai-1.

.... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 24.01.2014 made in M.A.C.T.O.P.No.359 of 2009 on the file of the Motor Accident Claims Tribunal and II Judge Small Causes Court, Chennai.

For Appellant : Mr.F.Terry Chella Raja

Respondent : Exparte (Vide in EB)
No.1

For Respondent: Mr.N.Vijayaraghavan
No.2

सत्यमेव जयते

JUDGMENT

This Civil Miscellaneous Appeal is filed for enhancement of compensation awarded by the Tribunal dated 24.01.2014 made in M.A.C.T.O.P.No.359 of 2009 on the file of the Motor Accident Claims Tribunal and II Judge of Small Causes, Chennai.

2.The appellant is claimant in M.A.C.T.O.P.No.359 of 2009 on the file of the Motor Accident Claims Tribunal and II Judge of Small Causes, Chennai. She filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by her in the accident that took place 04.08.2005.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident took place only due to the rash and negligent driving by the driver of the vehicle belonging to the first respondent and as insurer of the first respondent's vehicle, directed the second respondent to pay a sum of Rs.4,72,707/- as compensation to the appellant.

4.Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal for enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the Tribunal ought to have awarded compensation under the heads of permanent disability and loss of earning capacity separately. The appellant examined the doctor as PW2 and proved the disability as certified by the doctor at 70% and the Tribunal, without any reason, reduced the same to 60%. The amounts awarded by the Tribunal under the different heads are meagre and prayed for enhancement of compensation.

6.Mr.N.Vijayaraghavan, the learned counsel appearing for the second respondent Insurance Company contended that the Tribunal has given valid reason for reducing the percentage of disability and awarded the amount, which is not meagre and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the learned counsel for the second respondent and perused the materials available on record.

8.Considering the evidence of PW2 doctor with regard to the permanent disability, who certified that the appellant suffered 70% disability. The Tribunal has reduced the same to 60% and has not given any reason for reducing the disability to 60%. Hence, the appellant is entitled to get compensation for 70% of disability suffered by her. Hence, the amount awarded by the Tribunal is modified as follows:

$$\text{Rs.2,500/-} \times 12 \times 11 \times 70\% = \text{Rs.2,31,000/-}$$

9.The Tribunal has awarded excessive amount under the different heads, in view of the same, the appellant is not entitled to any enhancement except compensation for permanent disability. In view of the multiplier method applied by the Tribunal for granting compensation for permanent disability, the appellant is not entitled for compensation under the head of loss of earning capacity. The amounts awarded by the Tribunal

under all other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income for 12 months	30,000	30,000	confirmed
2.	Transportation	10,000	10,000	confirmed
3.	Extra nourishment	15,000	15,000	confirmed
4.	Damage to clothes	1,000	1,000	confirmed
5.	Medical expenses	13,707	13,707	confirmed
6.	Attender Charges	30,000	30,000	confirmed
7.	Mental agony to the petitioner	50,000	50,000	confirmed
8.	Disfigurement	50,000	50,000	confirmed
9.	Pain and suffering	75,000	75,000	Confirmed
10	Loss of earning capacity	1,98,000	2,31,000	Enhanced
	Total	4,72,707	5,05,707	Enhanced by Rs.33,000

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,72,707/- is hereby enhanced to Rs.5,05,707/-with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The second respondent/Insurance Company is directed to deposit the enhanced award amount with interest now

determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the enhanced award amount, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sms/tta

To

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

Copy to:

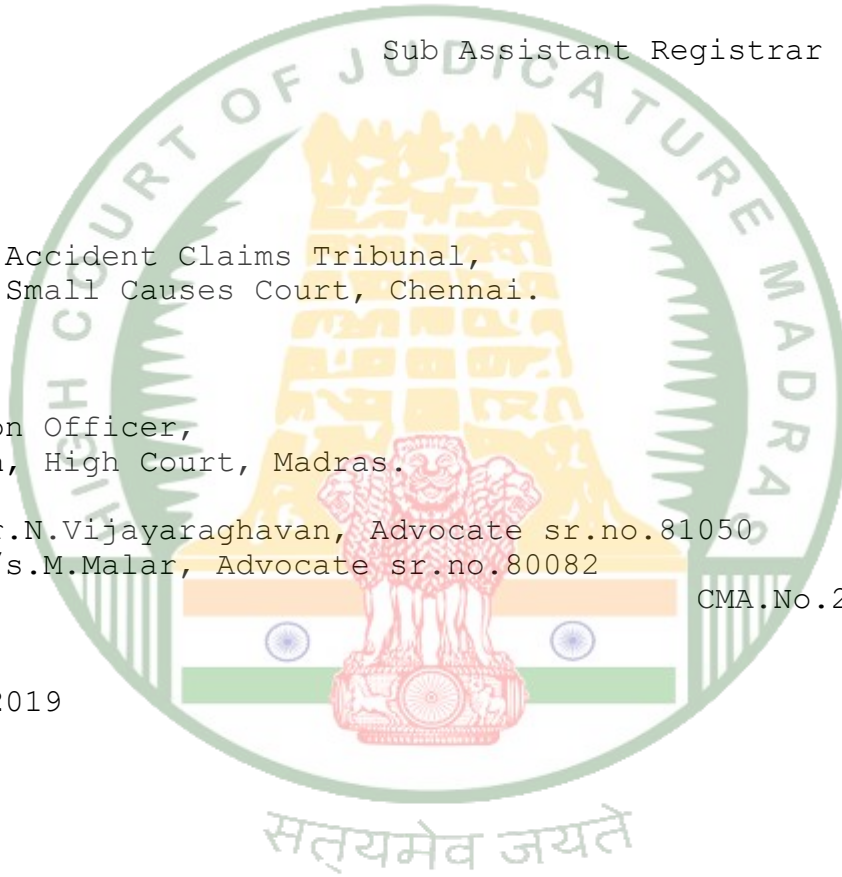
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.N.Vijayaraghavan, Advocate sr.no.81050

+1cc to M/s.M.Malar, Advocate sr.no.80082

CMA.No.2419 of 2015

ssv(co)
nr 27/03/2019



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