

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.03.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal Nos.318, 319 of 2018  
and  
Civil Miscellaneous Appeal No.1911 of 2015

C.M.A.No.318 of 2018

Parameswari

... Appellant/claimant

..vs..

1.Midas Golden Distilleries Pvt Ltd.,  
No.2/207, Padappai Pushpagiri,  
Sirumathur, Sriperumpudhur.

2.Cholamandalam MS General  
Insurance Company Ltd.,  
NSC Bose Road, Dare House,  
Chennai-600001.

..Respondents 1 & 2/  
Respondents 1 & 2

C.M.A.No.319 of 2018  
S.Pasupathy

... Appellant/Claimant

..vs..

1.Midas Golden Distilleries Pvt Ltd.,  
No.2/207, Padappai Pushpagiri,  
Sirumathur, Sriperumpudhur.

2.Cholamandalam MS General  
Insurance Company Ltd.,  
NSC Bose Road, Dare House,  
Chennai-600 001.

... Respondents 1 & 2/  
Respondents 1 & 2

C.M.A.No.1911 of 2015

Cholamandalam MS General  
Insurance Company Ltd.,  
NSC Bose Road, Dare House,  
Chennai-600 001.

...Appellant/2nd Respondent

Vs.

1.S.Pasupathy  
2.Midas Golden Distilleries Pvt Ltd.,  
No.2/207, Padappai Pushpagiri,  
Sirumathur, Sriperumpudhur.

..Ist respondent/claimant

...2nd Respondents/  
Ist Respondent

PRAYER IN C.M.A.NO.318 OF 2018: This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 10.10.2014 made in MCOP.No.3214 of 2010 on the file of the Motor Accident Claims Tribunal/II Judge, Small Causes Court, Chennai.

PRAYER IN C.M.A.NO.319 OF 2018: This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 10.10.2014 made in MCOP.No.3215 of 2010 on the file of the Motor Accident Claims Tribunal/II Judge, Small Causes Court, Chennai.

PRAYER IN C.M.A.NO.1911 OF 2015: This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order dated 10.10.2014 made in MCOP.No.3215 of 2010 on the file of the Motor Accident Claims Tribunal/II Judge, Small Causes Court, Chennai.

For Appellant : Mr.S.Ravikumar  
(in CMA.Nos.318  
and 319 of 2018) and

For Ist respondent (in CMA.No.1911/15)

For Respondents : Mr.N.Vijayaraghavan for R-2  
(in CMA.Nos.318 and 319 of 2018  
and appellant in CMA.No.1911 of  
2015)

#### COMMON JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal dated 10.10.2014 made in MCOP.Nos.3214 and 3215 of 2010, on the file of the Motor Accident Claims Tribunal/II Judge, Small Causes Court, Chennai, the petitioners/claimants have come forward this present appeals [CMA.No.318/2018 and CMA.No.319 of 2018] seeking enhancement of award amount.

Aggrieved over the finding of Tribunal, dated 10.10.2014 made in MCOP.No.3215 of 2010 on the file of the Motor Accident Claims Tribunal/II Judge, Small Causes Court, Chennai, the second respondent-Insurance Company has come forward with the present appeal [CMA.No.1911 of 2015] to set aside the award passed by the Tribunal

2. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that on 10.08.2010 at about 8.45 hours, while the petitioner Pasupathy in MCOP.No.3215 of 2010 was proceeding in his two wheeler bearing Registration No.TN-22-AU-0425, along with his wife Parameswari, the petitioner in MCOP.No.3214 of 2010, as pillion rider, in Anna Salai Vijayaraghavachari Road Junction, Chennai, from West to East direction, a car bearing Registration No.TN-22-BT-7195, came at high speed driven in a rash and negligent manner and dashed against the two wheeler in which both the petitioners were travelling and as a result of which, the petitioners fell down suffered grievous injuries all over the body. The occurrence took place only due to the rash and negligent driving by the driver of the car belonging to the first respondent, which was insured with the second respondent.

3.1. The petitioner(Pasupathy) in MCOP.No.3215 of 2010 states that he was aged about 50 years and was employed as Purchase Officer in Associated Cylinder & Accessories Private Limited earning a sum of Rs.15,000/- per month. Due to the fracture in his right leg and right hand wrist and other multiple grievous injuries suffered by him, he is not able to attend to his work regularly. As such, he suffered loss of income. Thus, the petitioner Pasupathy seeks a sum of Rs.5,00,000/- as compensation.

3.2. The petitioner(Parameswari) in MCOP.No.3214 of 2010, who is the wife of other petitioner Pasupathy states that she was aged about 45 years, by working as Tailor and she was earning a sum of Rs.200/- per day. Due to the injuries suffered in the accident, she is not able to do her Tailoring Job, resulting in loss of income to her. Thus, the petitioner seeks a sum of Rs.10,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, the second respondent-Insurance company which opposed the claim petition by filing detailed counter contends that the accident occurred only due to the negligence of the rider of the two wheeler who lost his balance due to over speed and dashed against the car resulting in the accident. As such, the respondent pleads the liability is to be

fixed on the rider of the two wheeler only. Even otherwise, the rider of the two wheeler has contributed to the accident and the negligence shall be apportioned between the drivers of two vehicles. The claim of the petitioners about their age, avocation and income is denied. The quantum of award claimed by the petitioners is highly excessive. Thus, the respondent-Insurance Company seeks dismissal of the petition.

5. Before the Tribunal, both the cases were taken up for joint trial and on the side of the petitioners P.W.1 to P.W.4 were examined and produced documents Ex.P1 to Ex.P18 to substantiate their claim. On the side of the respondents, neither oral evidence nor documentary evidence was let in.

6. The Tribunal, on the basis of available materials on record, found the first respondent car driver negligence alone caused the accident and as the owner and insurer of the offending vehicle viz., the respondents are liable to pay compensation and awarded a sum of Rs.1,96,000/- to the petitioner in M.C.O.P.No.3214 of 2010 (CMA.No.318 of 2018) and to pay a sum of Rs.6,44,800/- as compensation to the petitioner in M.C.O.P.No.3215 of 2010 (CMA.No.319 of 2018). Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants in both the cases have come forward with the present appeals[CMA.No.318 and 319 of 2018] seeking enhancement of award amount.

7. On the other hand, aggrieved over the finding as well as the quantum of compensation awarded by the Tribunal in MCOP.No.3215 of 2010, the second respondent-Insurance Company has come forward with this Appeal in CMA.No.1911 of 2015. All the appeals were taken up together, since they arose out of the common judgment passed by the Tribunal in MCOP.Nos.3214 and 3215 of 2010.

8. I have heard the learned counsel appearing for the appellants and the learned counsel appearing for the second respondent and perused the materials available on record.

9. The learned counsel appearing for the petitioners/claimants contended that the Tribunal failed to consider the evidence available on record properly and erred in fixing the monthly income as well as quantum under the different heads. It is further pointed out that the Tribunal has failed to appreciate properly the evidence of claimants and Doctors and nature of disability and other sufferings of the petitioners. The age, occupation and loss of earning power of the claimants was not properly appreciated by the Tribunal. The quantum arrived at by the Tribunal is very meager and the same needs enhancement. Thus, the petitioners/claimants seek to entertain the appeal and enhance the award amount as sought for by them.

10. Per contra, the learned counsel appearing for the second respondent-Insurance Company contends that the Tribunal, by not considering the evidence properly, fixed the quantum of award on the higher side and the same is unsustainable. The monthly income of the both petitioners is wrongly fixed and the disability also assessed on the higher side. The second respondent-Insurance Company seeks to entertain the appeal in [CMA No.1911 of 2015] and to set aside the award passed by the Tribunal which is not based on proper appreciation of the available materials.

11. The petitioners/claimants as well as the second respondent-Insurance Company are mainly aggrieved over the quantum of award passed by the Tribunal and that is a only issue raised before this Court in the appeals. The negligence and liability of the respondents as fixed by the Tribunal is not seriously disputed or agitated in the appeal before this Court.

12. According to the petitioners, who are the husband and wife, while they were proceeding in the two wheeler bearing Registration No.TN-22-AU-0425 on 10.08.2010 at 8.45 hours, from west to east direction near Anna Salai Vijayaraghavachari Road Junction, the first respondent's car bearing Registration No.TN-22-BT-7195 came at high speed and dashed against the two wheeler carrying the petitioners resulting in the accident. The eye witness account of P.Ws.1 and 2 who suffered injuries in the accident is not contradicted with any materials by the respondents. As such, neither the driver of the offending car nor any other witness was examined by the respondents to disprove the claim of the petitioners. Further, the Police also registered a case against the driver of the first respondent car only as evidenced by Ex.P1 First Information Report. In such circumstances, the conclusion of the Tribunal that the negligence on the part of the first respondent car driver alone caused the accident is just and proper. The fact that the offending vehicle, namely, the car bearing Registration No. TN-22-BT-7195 belongs to the first respondent and the same was insured with the second respondent is not disputed. As such, the respondents are liable to pay the compensation due the petitioner.

13. CMA.No.318 of 2018(MCOP.No.3214 of 2015):

The petitioner Parameswari deposed that she suffered Right Frontal Contusion, Right 6<sup>th</sup> Cranial Nerve Palsy and produced Ex.P2 Accident Register copy issued by Government Hospital, Royapettah, Chennai. It is clear from Ex.P4 Discharge Summary that the petitioner Parameswari took treatment as inpatient from 10.08.2010 to 17.08.2010 in Rajiv Gandhi Government General Hospital, Chennai. Subsequently, the petitioner took treatment as inpatient in Hindu Mission Health Service from 23.08.2012 to 01.09.2012. It is therefore clear from the evidence of P.W.1 and

the above said documents that the petitioner took treatment as inpatient as well as out patient for the injuries suffered by her in the accident over the period of time. The petitioner/claimant further stated that she was aged about 45 years and claims that she was earning a sum of Rs.200/- per day by working as Tailor. However, there is no details furnished as where she was working as Tailor and there is no proof for the income earned by her. Considering the nature of injuries and the fact that she knew Tailoring work and was working as Tailor, it will be appropriate to fix the monthly income at Rs.6,500/-. Taking in to account the fact that the nature of injuries suffered by her and the period of treatment undergone, she would not have worked as Tailor at least for three months. Hence, the loss of income during treatment period is calculated as Rs.6500/- x 3 months = Rs.19,500/-. Thus, the loss of income during treatment period is fixed at Rs.19,500/-.

13.1. As stated above, the petitioner has suffered fracture and multiple grievous injuries all over the body. According to P.W.4, the Doctor who examined the petitioner Parameswari and issued Ex.P16 Disability Certificate, the petitioner suffered from Head injury, facial injury and multiple internal, external injuries all over the body. P.W.4 also produced Ex.P18 Scan Report. However, P.W.4 admitted that he did not give treatment to the petitioner Parameswari. Along with Ex.P16 Disability Certificate, the Doctor has not produced any working sheet as to how the disability percentage was arrived at. In such circumstances, considering the nature of injuries suffered by the petitioner and also the evidence of P.W.4 Doctor, this Court is inclined to accept the assessment of the Tribunal at 50% disability suffered by the petitioner and the same is just and proper. The Tribunal assessed the loss of disability at 50%, providing Rs.2000/- per percentage. Considering the nature of injuries suffered and other attendant circumstances, this Court is of the view that Rs.3,000/- is to be provided for each percentage. Accordingly, the loss of disability is calculated as follows:- 50% x Rs.3,000/- = Rs.1,50,000/- as compensation under the head of permanent disability. Further, considering the nature of injuries suffered by the petitioner and other reasons advanced on behalf of the petitioner, this Court is inclined to modified the award is as follows:-

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| Sl No | Heads               | Amount awarded by the Tribunal | Awarded by this Court |
|-------|---------------------|--------------------------------|-----------------------|
| 1.    | Loss of income      | 5,000.00                       | 19,500.00             |
| 2.    | Transportation      | 7,000.00                       | 7,000.00              |
| 3.    | Extra-nourishment   | 7,000.00                       | 7,000.00              |
| 4.    | Damage to cloths    | 1,000.00                       | 1,500.00              |
| 5.    | Medical Expenses    | 51,000.00                      | 51,000.00             |
| 6.    | Pain and sufferings | 25,000.00                      | 25,000.00             |
| 7.    | Disability          | 1,00,000.00                    | 1,50,000.00           |
| 8.    | Attender Charges    | -                              | 10,000.00             |
| 9.    | Loss of Amenities   | -                              | 25,000.00             |
|       | Total               | 1,96,000.00                    | 2,96,000.00           |

14. CMA.No.319 of 2018(MCOP.No.3215 of 2015):

The petitioner Pasupathy deposed that he suffered Right Leg thigh bone fracture, Fracture in Right hand wrist, injury in both legs, facial injury and multiple internal and external injuries all over the body. He also underwent surgery to set right the fracture suffered by him. He also produced Ex.P7 Discharge Summary issued by Parvathi Hospital and it is evident from the same, that he took treatment as inpatient in the Hospital from 02.09.2010 to 07.09.2010. Thereafter, the petitioner took further continuous treatment in the same hospital from 15.09.2010 to 20.09.2010. It is therefore clear that the petitioner took treatment as inpatient for 42 days for the injury suffered by him.

14.1. The petitioner Pasupathi states that he was aged about 50 years and produced a copy of his driving licence as Ex.P13, wherein his date of birth is given as 20.05.1961. It is evident from the same, the petitioner was aged about 49 years at the time of the accident. The petitioner claiming himself to be employed as Purchase Officer in Associated Cylinder and Accessories Private Limited, stated that he was earning a sum of Rs.15,000/- per month. The petitioner produced Ex.P12 Pay slip wherein, the gross salary of the petitioner for July,2010 is shown as Rs.12,487/-. The petitioner has not examined any representative of the company in which the petitioner was working except for producing the above said pay certificate. The Tribunal has accepted the same and fixed the monthly income of the petitioner at Rs.12,000/- per month. However, aggrieved over the said finding, the respondent Insurance Company has preferred an appeal in CMA.No.1911 of 2015.

14.2. The learned counsel appearing for the respondent-Insurance Company contended that the Tribunal has wrongly fixed

the monthly salary of the petitioner at Rs.12,000/-, inspite of the Author of Ex.P12 Pay Certificate was not examined before the Tribunal. Hence, the respondent contends that the monthly income of the petitioner cannot be fixed at Rs.12,000/- and the same is to be reduced. Considering the above said factors and the fact that the petitioner failed to examine the owner or any authorised person of the company, in which he was employed and Taking in to account the other factors, this Court is inclined to fix the monthly income of the petitioner at Rs.10,000/- per month instead of Rs.12,000/- fixed by the Tribunal.

14.3. The petitioner was discharged from Parvathi Hospital after the treatment as evidenced by Ex.P17 Discharge Summary. It is clear from the documents produced by the petitioner that the petitioner underwent treatment as inpatient for 42 days in the hospital as evidenced by Ex.P6, Ex.P8 and Ex.P9. Further, P.W.3, the Doctor Saichandran who issued Ex.P15 Disability Certificate stated that the petitioner has suffered fracture and multiple grievous injuries. Considering the number of days petitioner took treatment as inpatient and other attendant circumstances, the petitioner would not have attended to his work at least for a period of four months. Hence, the loss of income during treatment period, the petitioner is entitled to get Rs.10,000/- per month. Thus, the loss of income during treatment would be Rs.40,000/-. Due to the fracture and other injuries suffered by him, he is not able to attend to his work as Purchase Officer in Private Company where he was earning Rs.15,000/- per month. The Doctor, who examined him, while deposing as P.W.3 stated that due to the fracture humerus, the petitioner's shoulder movement is restricted and reduced by 30 degrees. Further, the fracture of Right radius unite in wide manner, the restriction of right hand movement grip reduced. According to P.W.3, the petitioner also sustained injury to his back causing L4 - L5 disc collapse with low back ache. Thus, it is clear from the above said evidence that the petitioner has suffered permanent disability. Hence, the loss of earning power is calculated as follows:-

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$$\text{Rs.10,000/-} \times 12 = \text{Rs.1,20,000/-} \times 13 = \text{Rs.15,60,000/-} \times 40 / = \text{Rs.6,24,000/-}.$$
 Hence, the loss of earning power would be Rs.6,24,000/-.

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15. Considering the nature of injuries suffered by the petitioner, this Court is inclined to modify award passed by the Tribunal:-

| Sl No | Heads                 | Amount awarded by the Tribunal | Awarded by this Court |
|-------|-----------------------|--------------------------------|-----------------------|
| 1.    | Loss of income        | 48,000.00                      | 40,000.00             |
| 2.    | Transportation        | 10,000.00                      | 10,000.00             |
| 3.    | Extra-nourishment     | 15,000.00                      | 10,000.00             |
| 4.    | Damage to cloths      | 1,000.00                       | 1,000.00              |
| 5.    | Medical Expenses      | 1,25,000.00                    | 1,25,000.00           |
| 6.    | Pain and sufferings   | 35,000.00                      | 20,000.00             |
| 7.    | Disability            | 1,30,000.00                    | 1,30,000.00           |
| 8.    | Loss of earning power | 2,80,800.00                    | 6,24,000.00           |
|       | Total                 | 6,44,800.00                    | 9,60,000.00           |

16. C.M.A.No.318 of 2018:-

In the result, the civil miscellaneous appeal is partly allowed. No costs. The amount of Rs.1,96,000/- awarded by the Tribunal dated 10.10.2014 made in MCOP.No.3214 of 2010 on the file of the Motor Accident Claims Tribunal/II Judge, Small Causes Court, Chennai, is enhanced to Rs.2,96,000/- as compensation. The second respondent-Insurance Company is directed to deposit the entire enhanced award amount of Rs.2,96,000/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

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17. C.M.A.No.319 of 2018:-

In the result, the civil miscellaneous appeal is partly allowed. No costs. The amount of Rs.6,44,800/- awarded by the Tribunal dated 10.10.2014 made in MCOP.No.3215 of 2010 on the file of the Motor Accident Claims Tribunal/II Judge, Small Causes Court, Chennai, is enhanced to Rs.9,60,000/- as compensation. The second respondent-Insurance Company is directed to deposit the entire enhanced award amount of Rs.9,60,000/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of

receipt of a copy of this order. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

18. C.M.A.No.1911 of 2015:-

In view of the conclusion arrived at in the above said CMAs., the claim of the second respondent-Insurance Company that the award passed by the Tribunal is unjustified and unwarranted and the same is to be set aside cannot be accepted. The claim of the second respondent that the quantum of award passed by the Tribunal is on the higher side also not sustainable and the same has to fail. In the light of above said discussions and the conclusion arrived at by this Court, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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

+3 ccs to Mr.N.Vijayaraghavan Advocate sr 16240 to 16242  
+2 ccs to Mr.S.Ravikumar Advocate sr 16129 & 16130

C.M.A.Nos.318 & 319 of 2018  
and

C.M.A.No.1911 of 2015

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