

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.3182 of 2009

P.Anandhi

....Appellant /Claimant

Vs

1. The New India Assurance Co. Ltd.,
Motor Third Party Cell,
No.46, Moore Street,
Chennai 600 001.

2. K.Sundaramoorthy. ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 23.09.2008 in M.C.O.P.No.3665 of 2001, on the file of the Motor Accident Claims Tribunal, Fast Track Court No.V, Chennai.

For Appellant : Mr. K.Varadhe Kamaraj

For Respondents : Mr.S.Manohar for R1
No Appearance for R2.

JUDGMENT

The instant appeal has been filed challenging the quantum of compensation awarded by the tribunal in its award dated 23.09.2008 passed in M.C.O.P.No.3665 of 2001 (Motor Accidents Claims Tribunal, Fast Track Court No.V), Chennai.

2. The brief facts leading to the filing of the instant appeal are as follows;

(i) The appellant sustained injuries as a result of an accident caused by a Car bearing registration No. TN-01-V-0636 insured with the second respondent. The appellant preferred a compensation claim before the Motor Accident Claims Tribunal, V Fast Track Court, Chennai in M.C.O.P.No. 3665 of 2001 claiming compensation to the tune of Rs.1,50,000/-.

(ii) The Tribunal by its award dated 23.09.2008 passed in M.C.O.P.No. 3665 of 2001 directed the second

respondent to pay the appellant a sum of Rs.27,000/- together with interest at the rate of 7.5 per annum from the date of claim till the date of realisation and also awarded Rs.1,100/- as Advocate fee.

(iii) Aggrieved by the award dated 23.09.2008 passed in M.C.O.P.No 3665 of 2001, the appellant/claimant has filed the instant appeal seeking enhancement of compensation.

3. Heard, Mr. Varadhe kamaraj, learned counsel for the appellant and Mr.S.Manohar, learned counsel for the respondent No.1.

4. The primary ground for challenge in the instant appeal is that under the impugned award, the tribunal has not properly assessed the quantum of compensation payable to the appellant under the head transportation charges, nutrition, attender charges, loss of earnings and also not granted medical expenses claimed by the appellant in full, even though, medical bills were submitted by the appellant before the tribunal for the entire amount.

5.The learned counsel for the appellant submitted that as a result of the accident, the appellant sustained 50% disability and the injuries suffered by him includes the dislocation of right knee. Apart from the dislocation of the right knee, the appellant sustained head injury as well as multiple injuries all over the body.

6. According to the learned counsel for the appellant, even though the appellant had produced medical bills, disability certificate and discharge summary report from the hospital confirming the nature of injuries sustained by the appellant, the tribunal under the impugned award has not properly considered those documents and has assessed the quantum of compensation payable to the appellant only at Rs.27,000/-. As a result of the accident, the appellant had to undergo hospitalization for a number of days, which according to the learned counsel, was not duly considered by the tribunal in its Award.

7. Per contra, learned counsel for the second respondent would submit that the appellant had sustained only dislocation of the right knee and no fracture was sustained by him. Further, he would contend that the accident happened in the year 2001 and the claim made by the appellant includes compensation for hospitalization in the year 2004.

8. According to learned counsel for the second respondent, no records pertaining to continuous medical treatment were produced by the appellant before the tribunal. Learned counsel would further contend that Ex.P2

dated 28.06.2001 is the Discharge Summary given by Government Royapettah Hospital, Chennai contradicts the evidence of Pw.3 as well as the Disability Certificate Ex.P.11.

9. According to the learned counsel for the second respondent, Ex.P.2-Discharge summary discloses that the appellant suffered only the dislocation of the right knee, whereas, Ex.P.11 Disability Certificate discloses that the appellant sustained fracture. Therefore, according to him, Ex.P2 which was given by the Government hospital was rightly accepted by the tribunal.

10. This court, after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels observes as follows:-

a. It is an undisputed fact that the appellant sustained injuries as a result of an accident caused by a car insured with the second respondent.

b. According to the second respondent, dislocation of right knee will not amount to fracture. In the considered view of this court, this is not an acceptable argument, since dislocation happens in the joints and the fracture happens in any other bone of the body. It is to be noted that the pain and suffering caused as a result of dislocation as well as fracture is similar in nature. No contra evidence has been produced by the second respondent before the tribunal to distinguish that the dislocation is different from fracture.

c. The appellant has filed the disability certificate to confirm that she has suffered 50% disability, as a result of the injuries caused to her, on account of the accident which is marked as Ex.P.11. As seen from the impugned award, no contra evidence has been produced by the second respondent insurance company for coming to a conclusion to disprove the percentage of disability suffered by the appellant as a result of the accident.

11. In the considered view of the court, considering 50% of disability, the compensation awarded towards disability at Rs.15,000/- is very less.

12. This court is of the considered view that per percentage of disability, the tribunal ought to have awarded Rs.1000/- and therefore, the total compensation towards 50% of disability works out to Rs.50,000/- which the appellant is entitled to.

13. The tribunal has awarded a sum of Rs.1,000/- towards transportation, Rs.7,000/- towards pain and suffering, which, in the considered view of this court is

also less. The tribunal has not awarded any amount towards nutrition and attender charges which the appellant is entitled as per the settled principle of law. Further the appellant has produced medical bills for Rs.61,636/- and this court, on taking into account of the same, Rs.61,000/- was awarded towards medical expenses.

14. This court is of the considered view that of sum of Rs.5000/- was awarded for transportation, a sum of Rs.5,000/- towards nutrition and Rs.10,000/- for pain and suffering and Rs.1,000/- for attender charges and Rs.61,000/- towards reimbursement of medical expenses.

15. In the light of the above observations, this court is of the considered view that the compensation Awarded by the Tribunal to the Appellant has to be enhanced in the following manner as tabulated below;

Sl. No.	Amount awarded by the tribunal	Amount Awarded by this Court
Transportation	Rs. 1000/-	Rs. 5,000/-
Nutrition		Rs. 5,000/-
Pain and suffering	--	Rs.10,000/-
Attender charges	--	Rs. 1,000/-
Reimbursement of medical expenses	Rs.7000/-	Rs.61,000/-
Disability suffered at 50%	Rs.15,000/-	Rs.50,000/-
Loss of income	Rs.4000/-	
Total	Rs.27,000/-	Rs.1,32,000/-
		-

16. In the result, the appeal is partly allowed and the Award dated 23.09.2008 passed by the Motor Accident Claims Tribunal (Fast Track Court No V) at Chennai in M.C.O.P.No.3665 of 2001 is enhanced to Rs.1,32,000/- instead of Rs.27,000/- together with interest at the rate of 7.5% per annum on the enhanced amount from the date of petition till the date of realisation. No costs.

17.The 1st respondent Insurance Company is directed to deposit the compensation awarded by this Court in to the credit of MCOP.No.3665 of 2001, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order and on

such deposit being made, the appellant is permitted to withdraw the same on filing an appropriate application.

Sd/-
Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

msr/ebsi
To

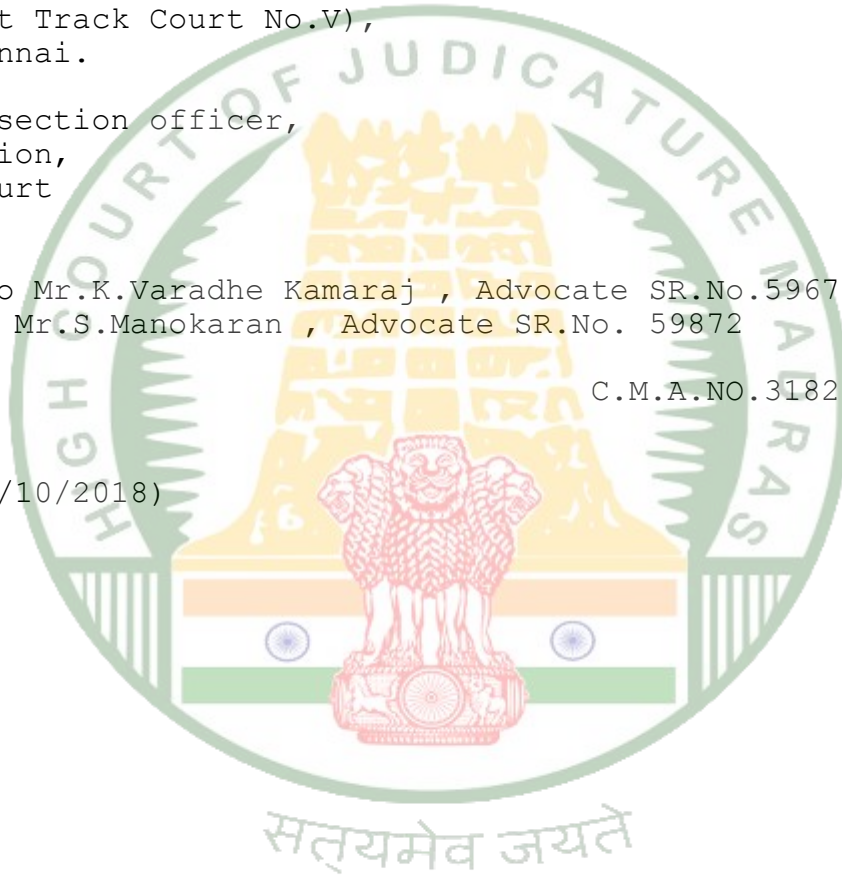
1. The Motor Accident Claims Tribunal,
(Fast Track Court No.V),
Chennai.

2. The section officer,
VR Section,
High court
Madras

+1cc to Mr.K.Varadhe Kamaraj , Advocate SR.No.59672
+1cc to Mr.S.Manokaran , Advocate SR.No. 59872

C.M.A.NO.3182 of 2009

ASK(25/10/2018)



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