

In the High Court of Judicature at Madras
Dated : 30.10.2018

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The Honourable Mr.Justice K.K. SASIDHARAN
AND

The Honourable Mr.Justice R. SUBRAMANIAN

C.M.A.Nos.3029 and 3030 of 2017

Anandhi

.... Appellant in CMA No.3029 of 2017/Petitioner

Minor Gopi

.... Appellant in CMA No.3030 of 2017/Petitioner

represented by his
mother Anandhi as
natural guardian and next friend

vs

1. Rajamanikkam

2. Sri Ram General Insurance Co Ltd.,
No.II Floor, No.66,
Thirumalai Pillai Road,
T. Nagar,
Chennai - 600 096

.... Respondents in both
Civil Miscellaneous Appeals have been filed under Section
173 of the Motor Vehicles Act, against the judgment and
decree in MACTOP Nos.2969/2012 (CMA No.3029/2017) and 2970/2012
(CMA No.3030/2018) dated 25.02.2016 on the file of Motor
Accidents Claims Tribunal, (V Court of Small Causes), Chennai.

For Appellants : Mr.F. Terry Chellaraja
For R.1 : Ex-parte
For R.2 : Mr.S. Dhakshanmoorthy

COMMON JUDGMENT

(Judgment of the Court was delivered by R. SUBRAMANIAN, J.)

Challenge in these appeals by the claimants, is to the Award
dated 25.02.2016 in MACTOP Nos.2969 and 2970 of 2012 of 2015

passed by Motor Accidents Claims Tribunal, (V Court of Small Causes), Chennai, granting a sum of Rs.2,95,500/- to the appellant in CMA No.3029/2017 and Rs.2,41,000/- to the appellant in CMA No.3030/2017 for the injuries suffered by them in the motor accident that occurred on 26.09.2011.

3. According to the appellants/claimants, on 26.09.2011, while the appellants (mother and son) were walking on the Urappakkam, Ananthavalli GST Road junction, a Pulsar Motor Cycle, bearing Registration No.TN-19-A-2896 came from Tamabaram, driven by its rider in a rash and negligent manner, dashed against the appellants, as a result of which, the claimants sustained grievous injuries. They claimed compensation of Rs.18,00,000/- and Rs.6,00,000/- respectively.

4. The claim petition was resisted by the second respondent Insurance Company contending that it was the negligence on the part of the claimants who attempted to cross the road suddenly without looking for oncoming vehicles that resulted in the accident. The quantum of compensation was also termed as excessive considering the nature of injuries.

5. In order to prove their claim, the first appellant/claimant examined herself as P.W.1 and Dr.Mathiazhagan was examined as P.W.2 and Exs.P.1 to 11 were marked. On the side of the respondent Insurance Company, no oral or documentary evidence was let in.

6. The Tribunal, after considering the oral and documentary evidence came to the conclusion that the accident was caused due to rash and negligent driving of rider of Pulsar Motorcycle insured with the appellant Insurance Company and accordingly, the Tribunal held that both the respondents are jointly and severally liable to pay the compensation. This appeal is filed by the first appellants/claimants, seeking enhancement,

7. According to the claimants, the appellant in CMA No.3029/2017, aged 32 years was working in the House Keeping Department at SRM Hospital, Potheri and drawing a sum of Rs.6,000/- per month. It is her further claim, that, because of the accident, she is not able to continue to do the same work and hence, she has suffered pecuniary loss.

8. On the basis of discharge summary and the evidence of P.W.2, the doctor, the Tribunal assessed the disability at 40%. The Tribunal refused to award compensation on the ground of loss of earning capacity and granted a sum of Rs.2,95,500/- on various heads, which is as follows:

Transportation, nourishing food and

miscellaneous expenditure	:	Rs. 20,000
Attender charges	:	Rs. 4,200
Medical Expenses	:	Rs. 17,197.50
Disability	:	Rs.1,20,000
Loss of earning during the period of treatment	:	Rs. 24,000
Damages for pain,suffering and trauma	:	Rs. 50,000
Loss of amenities	:	Rs. 60,000

		Rs.2,95,397.50

Total compensation was fixed at Rs.2,95,397.50 and rounded to Rs.2,95,500/-.

9. Heard Mr.F. Terry Chellaraja, learned counsel for the appellants/claimants and Mr.S. Dhakshnamoorthy, learned counsel for the second respondent Insurance Company. The first respondent, owner of the offending vehicle remained ex-parte before the Court below. Hence notice to the first respondent, in this appeal, is dispensed with.

10. The learned counsel for the appellants/claimants submitted that the Tribunal should have granted some amount towards loss of earning capacity to the first appellant considering the the nature of injuries sustained by her.

11. We also find that there are five fractures in the hip bones. It is clear that these fractures would definitely have long lasting effect and there would be diminution of earning power of the first appellant. Based on the doctor's certificate, the Tribunal has come to the conclusion that the extent of disability would be 40%. We see no reason to interfere with the percentage of disability arrived by the Tribunal. However, the Tribunal has not granted any amount towards loss of earning power.

12. We, are of the view that this is a fit case which deserves an award under the head of loss of earning capacity. As already stated, the Tribunal had taken the monthly income of Rs.6,000/-. Thus the loss of earning capacity works out to Rs.4,60,800/- (Rs.6,000 x 12 x 16 x 40/100).

13. Since the amounts awarded by the Tribunal towards other heads are just and reasonable, they need no interference. Hence the Civil Miscellaneous Appeal in CMA No.3029 of 2017 is partly allowed and the award is enhanced to Rs.7,56,300/- (Rs.2,95,500 + 4,60,800). The award will carry interest at 7.5% p.a from the date of petition till the date of payment.

14. Insofar as the appeal in CMA No.3030 of 2017 is concerned, the injured/claimant was aged 3 years at the time of accident. The only injury sustained by the minor child was a fracture of

his right femur. Considering the age of the injured, the Tribunal has held that there cannot be any loss of earning capacity and granted a sum of Rs.2,41,000/- under various heads, as follows:

Transportation, nourishing food and miscellaneous expenditure	:	Rs. 20,000
Attender charges	:	Rs. 4,200
Medical Expenses	:	Rs. 26,728.50
Disability	:	Rs. 90,000
Damages for pain, suffering and trauma	:	Rs. 50,000
Loss of amenities	:	Rs. 50,000

		Rs.2,40,928.50

Total compensation is fixed at Rs.2,40,928.50 and rounded to Rs.2,41,000/-.

15. We find the award passed by the Tribunal is just and reasonable and we do not find any reason to interfere with the award passed by the Tribunal in MCOP No.2970 of 2012. Hence the appeal in CMA No.3030 of 2017 fails and the same is dismissed.

16. In the result, the appeal in CMA No.3029 of 2017 is partly allowed, enhancing the award amount to Rs.7,56,300/- with interest at 7.5% from the date of petition till the date of deposit. The Insurance Company is directed to deposit the enhanced award amount i.e., Rs.7,56,300/- within a period of six weeks from the date of receipt of a copy of this judgment. On

such deposit, the appellant in CMA No:3029/17 is permitted to withdraw the amount. The appeal in CMA No.3030 of 2017 is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.Motor Accidents Claims Tribunal,
(V Court of Small Causes), Chennai.

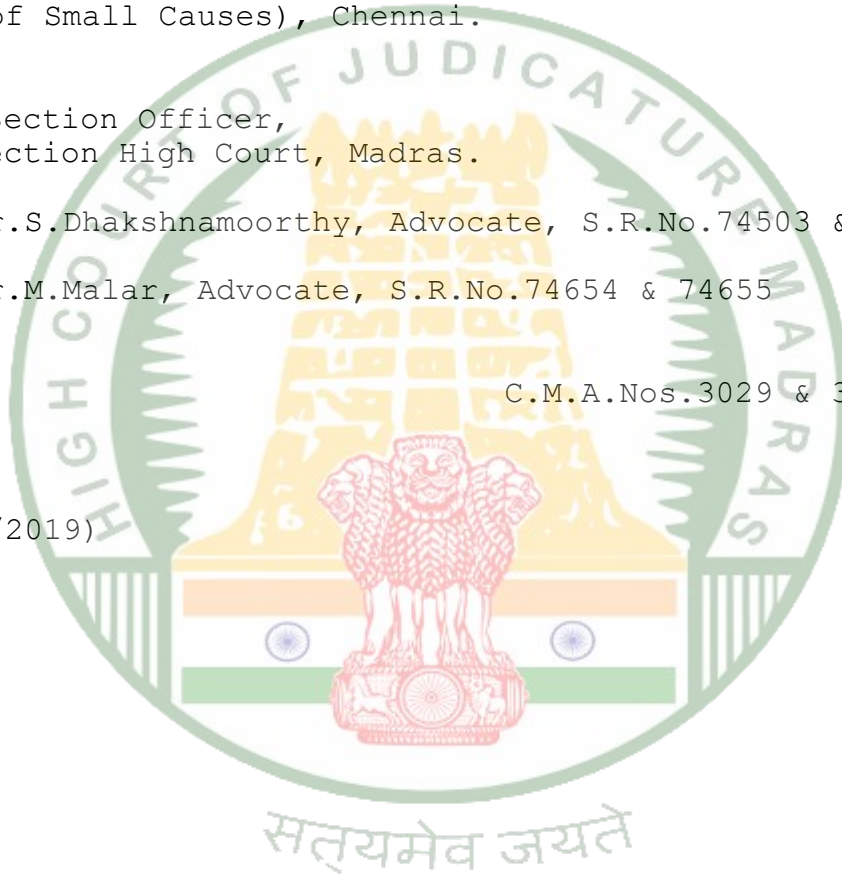
Copy to
The Section Officer,
VR Section High Court, Madras.

+2cc to Mr.S.Dhakshnamoorthy, Advocate, S.R.No.74503 &74504

+2cc to Mr.M.Malar, Advocate, S.R.No.74654 & 74655

C.M.A.Nos.3029 & 3030 of 2017

GP(CO)
GSP(13/02/2019)



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