

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal Nos.2067 and 3990 of 2008
and M.P.No.1 of 2008

C.M.A.No.2067 of 2008:

A.Malarvizhi ... Appellant/Claimant

...Vs...

1.Narayanamoorthy

2.M/s.New India Assurance Company Limited,
C/o.Motor Third Party Claims Office,
No.45, Moore Street, Chennai - 1Respondents/Respondents

C.M.A.No.3990 of 2008:

M/s.New India Assurance Company Limited,
Motor Third Party Claims Office,
No.45, Moore Street, Chennai - 1. ...Appellant/2nd Respondent

... Vs...

1.A.Malarvizhi ...1st Respondent/Claimant

2.Narayanamoorthy ...2nd Respondent/1st Respondent

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the common judgment and decree, dated 02.01.2008 made in MCOP No.571 of 2003 on the file of the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, Chennai.

For Appellant in
CMA.No.3990 of 2008 : Mr. V.Soundarrajan

For Appellant in
CMA.No.2067 of 2008 : Mr. T.G.Balachandran

For R1 in
CMA.No.3990 of 2008 : Mr. T.G.Balachandran

For R1 in CMA.No.2067 of 2008
and R2 in CMA.No.3990/2008 : Set exparte

For R2 in
CMA.No.2067 of 2008 : Mr. V.Soundarrajan

C O M M O N J U D G M E N T

These appeals have been filed before this Court, one by the Insurer and another by the claimant, which are directed against the judgment and decree, dated 02.01.2008 made in MCOP No.571 of 2003 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

2.The facts of the case are that on 12.01.2003, at about 9.00hours, the first respondent in CMA.No.3990 of 2008 / Appellant in CMA.No.2067 of 2008, was proceeding in the scooty two-wheeler bearing Reg.No.TN-05-C-6215 on the Gandhi Mandapam Road, Chennai from South to North direction and when she took a right turn to enter IIT Quarters, Kotturpuram, the Qualis Car bearing Reg.No.TN-07-Q-0760, belonging to the first respondent and insured with the second respondent in C.M.A.No.2067 of 2008, came from behind in a rash and negligent manner and dashed against the scooty two-wheeler which she was riding. Due to the said impact, the the first respondent in CMA.No.3990 of 2008 sustained grievous injuries. The injured filed a claim petition before the Tribunal claiming a sum of Rs.4,00,000/- as compensation. Considering the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.1,43,500/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the claimant has filed the appeal in C.M.A.No.2067 of 2008 and the Insurance Company has filed the appeal in C.M.A.No.3990 of 2008.

4.The learned counsel for the claimant has submitted that the compensation awarded by the Tribunal is meagre compared to the claim made by the claimant to the tune of Rs.4,00,000/- and that the compensation awarded is not in consonance with the injuries suffered by the claimant. Stating so, the learned counsel prayed for enhancement of compensation.

5.Per Contra, the learned Counsel for the Insurance Company has submitted that the Tribunal has analysed each and every aspect and has rendered findings. He further submitted that the accident was an invited one by the claimant, which the Tribunal failed to consider. He further submitted that in any event, the

contributory negligence ought to have been fixed against the claimant by the Tribunal.

6.This Court has considered the said submissions made by the learned counsel on either side and perused the materials available on record.

7.An analysis of the award of the Tribunal would go to show that towards fastening the liability, the Tribunal has taken note of Exs.P1, P2 and P3 and the evidence of P.W.1. To disprove the above, neither the car driver nor the owner of the car was examined. Hence, in the absence of any contra evidence adduced on the side of the Insurance Company, the Tribunal came to the conclusion that the insured and the insurer of the Toyota Qualis car are responsible for the accident and accordingly rendered findings. This Court is not inclined to interfere with the said factual finding arrived at by the Tribunal.

8.As far as the quantum of compensation is concerned, the Tribunal has awarded a sum of Rs.47,633/- towards medical expenses relying upon Ex.P5, Ex.P7 and Ex.P8-Medical bills, Rs.500/- towards damages to clothes, Rs.2,000/- each towards injuries and extra nourishment, Rs.31,270/- towards compensation for the leave taken due to the injuries, Rs.50,000/- towards 50% permanent disability at the rate of Rs.1,000/- per percentage of disability and Rs.10,000/- towards pain and suffering.

9.However, the Tribunal has failed to take note of the fact that the claimant sustained fractures in left hip, left elbow and skeletal traction. It is evident from Ex.P4-Discharge Summary that future medical treatment is necessary for the claimant. It would be appropriate to award a sum of Rs.30,000/- towards future medical expenses. Further, it is seen that no amount has been awarded towards transport expenses. It would be appropriate to award a sum of Rs.3,000/- towards that head. Due to the injuries sustained, the claimant would have suffered a lot of pain and suffering. Considering the same and also the disability of 50%, enhancing the amounts awarded by the Tribunal towards extra nourishment, pain and suffering and permanent disability to Rs.5,000/-, Rs.25,000/- and Rs.75,000/- (at the rate of Rs.1,500/ per percentage of disability) respectively, would meet the ends of justice. The details of the modified compensation are as follows:

Head	Amount Rs.
Compensation for the leave taken due to the injuries	31,270/-
Injuries	2,000/-

Head	Amount Rs.
Extra nourishment	5,000/-
Damage to clothes / articles	500/-
Medical expenses	47,633/-
Pain and suffering	25,000/-
Permanent disability	75,000/-
Future medical expenses	30,000/-
Transport expenses	3,000/-
Total ...	2,19,403/-

Thus, the claimant is entitled to the modified compensation of Rs.2,19,403/-.

10. At this juncture, the learned counsel for the Insurance Company submitted that the Insurance Company cannot be saddled with the interest from the date of petition, since the claimant's appeal was an earlier one. The said contention has some force. Hence, the interest awarded by the Tribunal at the rate of 7.5% per annum would be from the date of appeal and not from the date of petition.

11. In the result:

(i) CMA.No.2067 of 2008 filed by the claimant is partly-allowed by enhancing the quantum of compensation from Rs.1,43,500/- to Rs.2,19,403/-, which is payable with interest at the rate of 7.5% per annum from the date of appeal till the date of deposit.

(ii) CMA.No.3990 of 2008 filed by the Insurance Company/Insurer is dismissed.

(iii) The Insurance Company and the owner of the vehicle are jointly and severally directed to deposit the award amount as determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment.

(iv) On such deposit, the claimant is permitted to withdraw the same, on making proper application before the Tribunal.

(v) No costs. Consequently the connected MP is closed.

s/d-

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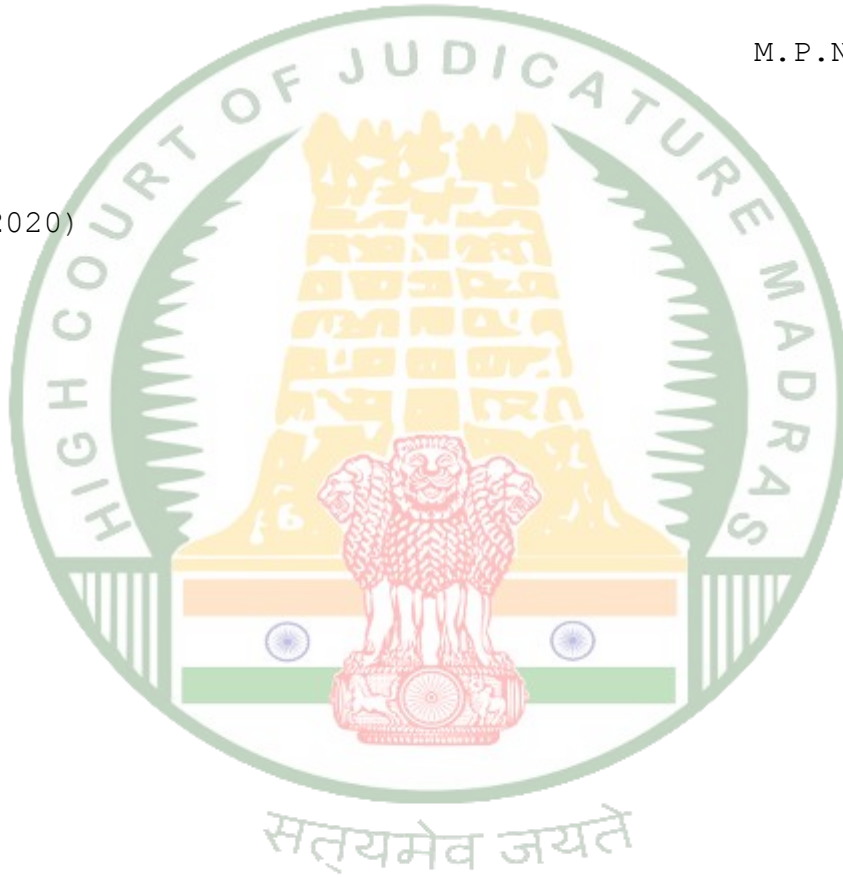
1. IV Judge, Court of Small Causes,
Motor Accident Claims Tribunal, Chennai.

2.The Section Officer, V.R.Section, High Court, Madras.

+1 CC to Mr.T.G. Balachandran, Advocate sr 71427.

C.M.A.Nos.2067 and 3990 of 2008
and
M.P.No.1 of 2008

SV(CO)
SP(02/11/2020)



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