

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2019

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

C.M.A.No.3770 of 2005

Devagi

... Appellant/Petitioner

Vs.

1.K.Mohan

(Ist Respondent called absent st exparte in Trial Court)

2.The United India Ins. Co. Ltd.,

Motor III Party Claims Office,

No.38, Anna Salai,

Chennai - 2.

... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.04.2005 made in M.C.O.P.No.403 of 2003 on the file of the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court-III, Poonamallee).

For Appellant : Mr.J.Mahalingam

R1 : Set exparte

For R2 : Mrs.R.Sreevidhya

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the award passed by the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court No.III), Poonamallee ('the Tribunal' for brevity), on 18.04.2005 in M.C.O.P.No.403 of 2003.

2.It is the case of the appellant/claimant that on 21.06.2002, at about 08.15 p.m., when the appellant was travelling as a pillion rider in the motorcycle bearing Registration No.TN-09-AA-2657, on Kilkattalai-Velachery Road, near Kilkattalai bus stop, the rider of the motorcycle drove the motorcycle in a rash and negligent manner at high speed and went into a ditch and as a result, both the rider and the pillion rider fell down. Due to the said impact, the appellant sustained grievous injuries and fractures. She filed a claim petition before the Tribunal in M.C.O.P.No.403 of 2003, claiming a total compensation of Rs.3,00,000/-. The Tribunal, on analysis of the evidence and materials on record, awarded a compensation of Rs.40,000/- towards disability, Rs.30,000/-

towards pain and suffering, Rs.12,000/- towards loss of income during medical treatment, Rs.3,000/- towards transportation charges and extra nourishment, totalling to Rs.85,000/- with interest @ 9% p.a. from the date of claim petition. Feeling aggrieved and being dissatisfied with the quantum so awarded, the appellant has filed the present appeal, seeking enhancement of the same.

3.Learned counsel for the appellant contended that the Tribunal has erred in awarding only a sum of Rs.40,000/- towards disability sustained by the appellant, despite the fact that there is malunion of bone in the right hand of the appellant, affecting her daily business of flower vending, which has been admitted by Dr.N.Saichandran (P.W.2) in his evidence. He further contended that the Tribunal had failed to appreciate the evidence of the appellant (P.W.1), while deciding the compensation towards loss of income. He further submitted that the amounts awarded by the Tribunal under various heads are meagre.

4.Per contra, learned counsel appearing for the 2nd respondent Insurance Company refuted the said contentions and submitted that the Tribunal has considered all the material evidences and has awarded the compensation, which is just, fair and reasonable and hence, the award of the Tribunal has to be confirmed.

5.Heard the learned counsel on either side and perused the materials available on record.

6.It is seen from the materials available on record that the Tribunal has taken note of the fractures and other grievous injuries sustained by the appellant, supported by medical records and discharge summary and the evidence of P.W.2. Considering the grievous injuries and fractures sustained by the appellant, which are evident from the deposition of Dr.N.Saichandran (P.W.2), this Court is inclined to award a sum of Rs.30,000/- towards medical expenses, Rs.5,000/- towards attendant charges, Rs.20,000/- towards future loss of earnings, Rs.3,000/- towards damage to clothes and articles and are accordingly, awarded. Further, the amount awarded by the Tribunal for pain and suffering is enhanced from Rs.30,000/- to Rs.40,000/- and the amount awarded towards transportation and extra nourishment is hereby enhanced from Rs.3,000/- to Rs.5,000/-. However, there is no modification with regard to the award of Rs.12,000/- towards loss of income and Rs.40,000/- towards 40% permanent disability. Thus, the appellant / claimant is entitled to the modified compensation of Rs.1,55,000/-. It is made clear that the enhanced amount of Rs.70,000/- shall carry interest only at 7.5% per annum from the date of filing of this appeal.

7.In fine, this Civil Miscellaneous Appeal is partly

allowed. No costs. The second respondent Insurance Company is

directed to deposit the entire compensation as awarded by this Court with interest and costs, less the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-

Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

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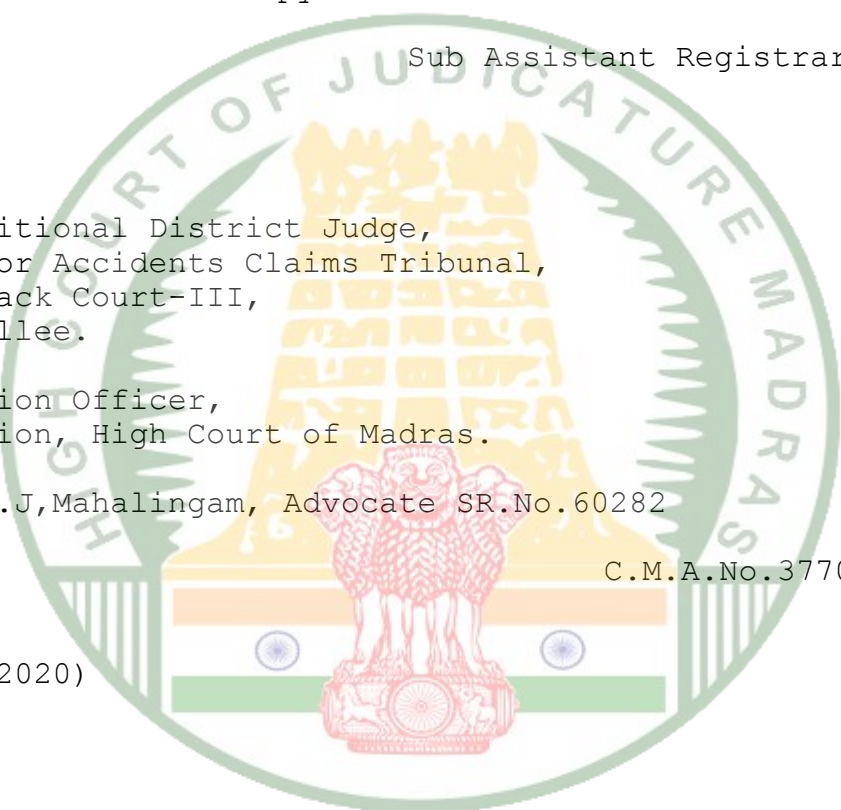
1. The Additional District Judge,
The Motor Accidents Claims Tribunal,
Fast Track Court-III,
Poonamallee.

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

+1cc to Mr.J,Mahalingam, Advocate SR.No.60282

C.M.A.No.3770 of 2005

BR(CO)
GMY(11/11/2020)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital of Ashoka at its base. The gopuram is set against a background of a green and white striped field. The words "HIGH COURT OF JUDICATURE MADRAS" are inscribed in a green circle around the central image. Below the seal, the motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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