

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2019

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

C.M.A.No.662 of 2006

R.Natarajan ... Appellant/Petitioner

Vs.

1.Dr.Uma Manohar

2.United India Insurance Co. Ltd.,  
Motor Third party Claims Office,  
No.38, Anna Salai,  
Chennai - 2. ... Respondents/Respondents

[R1 was set ex parte in the trial Court]

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.09.2005 in M.C.O.P.No.372 of 2003 on the file of the VI Judge, Motor Accident Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : M/s.C & K Law Firm

R1 : Ex parte

For R2 : Mr.C.Paranthaman

J U D G M E N T

Feeling aggrieved and being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has preferred this Civil Miscellaneous Appeal, seeking enhancement of the same.

2.The case in brief is as follows:

On 29.12.2002 about 20.30 hours, when the appellant/claimant was proceeding as a pillion rider in a motor-cycle, bearing Registration No.TN-22-A-3891, on Velachery Main Road, a Car (Tata Safari) bearing Registration No.TN04-K-0055 came from the opposite direction in a rash and negligent manner and dashed against the motor-cycle. Due to the said impact, the appellant/claimant sustained grievous injuries and fracture. Later, he filed a claim petition claiming a compensation of Rs.12,00,000/- before the Tribunal, which, after a detailed analysis of the evidence and materials placed before it, awarded a total compensation of

Rs.5,90,500/- with interest @ 7.5% p.a. from the date of claim petition. Stating that the compensation so determined is inadequate, the appellant/claimant is before this Court with the present appeal.

3.The learned counsel for the appellant contended that considering the nature of the injuries sustained by the appellant/claimant, the quantum of compensation awarded by the Tribunal is on the lower side and hence, the same has to be enhanced.

4.Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent Insurance Company submitted that the Tribunal has considered all the oral and documentary evidence on record and has passed the just award, which has to be confirmed.

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

6.This is a claimant's appeal seeking enhancement of the compensation awarded by the Tribunal. Hence, this Court is not inclined to go into the findings of the Tribunal relating to negligence and the liability of the 2<sup>nd</sup> respondent insurance company to pay compensation to the appellant/claimant.

7.As regards the quantum of compensation, the appellant examined himself as P.W.1 and he stated that in the accident, he sustained fracture in his right leg and injuries on head and all over the body; he took first aid at Jaya Hospital and thereafter, treatment in Government Hospital for one day; later he was admitted at Bone and Joint Hospital and treated as inpatient from 31.12.2002 to 29.01.2003 and external fixation was done; thereafter he was admitted in the same hospital from 12.2.2003 to 24.2.2003 and bone grafting was done and plate was fixed; due to development of infection, he was again admitted to the same hospital on 17.09.2003 and taken treatment as inpatient till 1.10.2003 and bone grafting was again done; subsequently he was admitted on 4.10.2003 and taken treatment till 29.10.2003 and surgery was also done. P.W.1 further stated in his evidence that even after the treatment, the length of his right leg was reduced by 3 inches and he walks with the limb; he was working as a fireman and earning Rs.4,492/- per month; due to the injuries, he could not able to complete his probation. Exs.P1 to P7 are the medical records. Ex.P11 is the pay certificate. As per Ex.P12 -loss of pay certificate, he was on medical leave without pay for one year and eight months. Ex.P13 -memo disclosed that he was on medical leave without pay for 28 days.

8.Dr.J.R.R.Thyagarajan (P.W.2) has deposed that the appellant's thigh bone had broken into pieces and they had been united with plate and screw; due to the infection, a portion of tibia was removed; he lost muscles and the broken bone had not united; the length of his right leg was reduced

by 3 inches; he could bend his right thigh only to an extent of 60 degree and knee only to an extent of 80 degree; he walks with a limp and sustains a partial permanent disability of 60%. His evidence was corroborated by Ex.P8 photos and negatives. Ex.P18 is the disability certificate. The Tribunal, based on the oral and documentary evidence adduced by the appellant/claimant, has rightly awarded Rs.94,332/- (Rs.4492 x 21 months) towards loss of earning, which is just and reasonable and hence, the same is hereby confirmed.

9.Further, the Tribunal has awarded Rs.10,000/- towards transportation, based on Ex.P9-travelling bill, Rs.5,000/- towards extra nourishment, Rs.1,000/- towards damage to dress and motorcycle, Rs.3,15,000/- towards medial expenses, Rs.5,000/- towards loss of income and Rs.5,000/- towards mental agony and Rs.1,25,000/- towards permanent disability, which, in the considered opinion of this Court, appear to be fair, just and reasonable and hence, the same are hereby confirmed.

10.However, the Tribunal has awarded only a sum of Rs.5,000/- towards loss of amenities, which appears to be on the lower side and hence, the same is hereby enhanced to Rs.30,000/-. Similarly, the award of Rs.25,000/- towards pain and suffering is hereby enhanced to Rs.50,000/-, having regard to the gravity of the injuries, period of treatment and nature of treatment undergone by the appellant/claimant. Thus, the total compensation of Rs.5,90,500/- awarded by the Tribunal is enhanced to Rs.6,40,500/- by this Court. However, it is made clear that the enhanced sum of Rs.50,000/- shall carry interest at 7.5%pa only from the date of filing of this appeal.

11.Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

12.The 2<sup>nd</sup> respondent Insurance Company is directed to deposit the entire compensation along with interest and costs, after deducting 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 Tribunal shall transfer the amount lying in the deposit to the Savings Bank account of the appellant/claimant, through RTGS, within a period of one week thereafter.

Sd/-  
Asst.Registrar (CS II )

/true copy/

Sub Asst. Registrar

To

1.The VI Judge,  
Motor Accident Claims Tribunal  
(Court of Small Causes),  
Chennai.

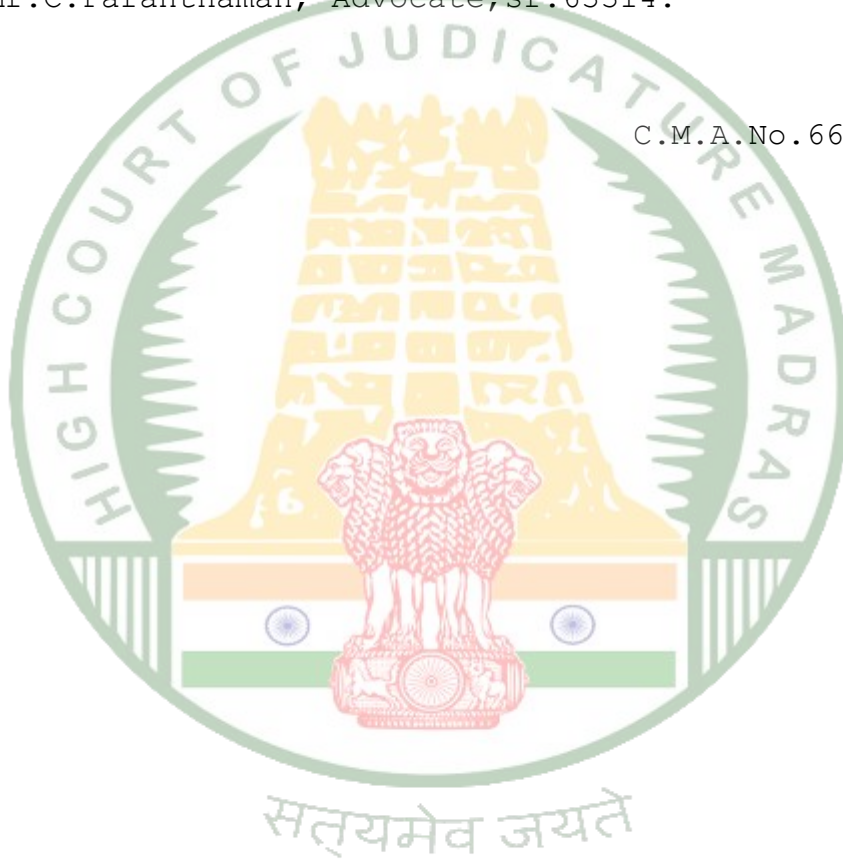
2.The Section Officer,  
VR Section, High Court of Madras.

+1 cc to Mr.C.Munusamy, Advocate, sr.63417

+1 cc to Mr.C.Paranthaman, Advocate, sr.63314.

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krd 16/9

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