

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
C.M.A.No.3010 of 2010

A.Nagalakshmi ... Appellant/ Petitioner

Vs

1.T.Anbanandhan

2.The New India Assurance Co. Ltd.,
Motor Third Party Claims Office,
No.251, Thiruvottriyur High Road,
Tondiarpet,
Chennai - 600 021. ... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.03.2010 made in M.C.O.P.No.2855 of 2006 on the file of the V Judge, Court of Small Causes, Chennai.

For Appellant : Mr.A.A.Venkatesan

For Respondents: Mrs.Harini
for M/s.N.Vijayaraghavan

JUDGMENT

The appellant is the claimant in this appeal filed challenging the judgment and decree dated 09.03.2010 passed in M.C.O.P.No.2855 of 2006 by the learned V Judge, Court of Small Causes, Motor Accident Claims Tribunal, Chennai.

2. The facts in a nutshell are as under: On 09.07.2004 at about 07:30 Hours, while the claimant was carefully travelling as a pillion rider in a motor cycle bearing Regn.No.TN-04-U-7509 along T.H.Road, near Lakshmi Amman Koil, Tondiarpet, Chennai - 600 021, from south to north direction, the rider of the said motor cycle drove the motor cycle in a very rash and negligent manner, at terrific speed, endangering public safety and suddenly and abruptly applied the brake without minding about the pillion rider. In this process, the pillion rider was thrown out of the vehicle and fell down, due to which the claimant sustained grievous injuries. The said vehicle was

insured with second respondent. The claimant sought Rs.1,50,000/- as compensation from the respondents in M.C.O.P. No. 2855 of 2006.

3. The 2nd respondent Insurance Company appeared through their counsel and filed counter statement and denying the allegations made in the claim petition. The first Respondent was set exparte before the Tribunal.

4. On behalf of the appellant, two witnesses were examined and four exhibits were marked. The respondents did not mark any documents, nor let in any oral evidence.

5. The learned Tribunal, by the judgment under challenge, awarded a sum of Rs.38,500/- as compensation to the appellant.

6. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant had preferred this appeal.

7. The learned counsel for the appellant argued that the Tribunal failed to consider that the claimant sustained fracture of right hand and fore arm, contusion of right wrist and was admitted as inpatient from 14.07.2004 to 15.07.2004 which has been proved through Ex.P2, Discharge Summary issued by Government Stanely Hospital, Chennai.

8. The learned counsel for the appellant further submitted that the disability taken into account by the Tribunal is on the lower side. He added that while the Orthopedic Surgeon assessed the disability as 35%, the same was reduced to 25% and fixed at Rs.1,000/- per percentage while calculating the amount under disability head and awarded only Rs.25,000/- and the same is erroneous and not justifiable. Further, the Appellant Counsel argued that the Tribunal failed to consider that the injured was a tailor and self employed and, thus, erred in not awarding any amount towards loss of income.

9. On the other hand, the learned counsel for the second respondent insurance company contended that the Tribunal correctly and rightly perused the oral and

documentary evidence and awarded reasonable compensation, which needs no interference and sought for dismissal of this appeal.

10. I heard Mr.A.A.Venkatesan, learned counsel for the appellant and Mrs.Harini for M/s.N.Vijayaraghavan, learned counsel for the 2nd respondent and perused the evidence and documents available on record.

11. The Tribunal has not awarded any amount towards loss of earning. The Tribunal held that the appellant had not produced any proof to show that she was earning Rs.3000/- per month from her profession as Tailor and held that no compensation need be awarded under this head.

12. The appellant claimed loss of earning for the period from 9.7.2004 to 8.1.2005. Taking into consideration of the nature of injuries sustained by the appellant in the accident, she would have availed of leave for at least five to six months. Therefore, this Court is inclined to take five months as leave period for the purpose of awarding compensation. Taking Rs.3,000/- as her salary per month, this Court hereby grants Rs.15,000/- (Rs.3,000/- x 5) towards loss of earning for five months.

13. The Tribunal has not awarded any amount towards attender charges. Though in the claim petition, the appellant claimed Rs.15,000/- towards attender charges, no proof was filed nor any witness was examined to fortify the said claim. However, taking note of the injuries sustained by the appellant, she would have been taken care of by the attender during quite some time. Therefore, it would appropriate to award a sum of Rs.10,000/- for attender charges.

14. The Tribunal has not awarded any amount towards loss of amenities. Considering the nature of injuries, this Court finds that it would be appropriate to award a sum of Rs.10,000/- towards loss of amenities.

15. Taking into consideration that the appellant suffered fracture of right forearm, contusion over right wrist and multiple injuries all over the body, which fact is fortified from the discharge summary (Ex.P2), this Court feels it just and proper to award Rs.2,000/- per percentage

of disability. For 25% of disability taken into consideration by the Tribunal, it Rs.2,000/- is awarded per percentage, the loss due to disability works out to Rs.50,000/-.

16. The amount awarded by the Tribunal under all other heads remains unaltered. The award is modified as under:

Loss of Income	..	Rs.15,000/-
Transportation	..	Rs. 1,000/-
Attender Charges	..	Rs.10,000/-
Extra Nourishment	..	Rs. 2,000/-
Loss of amenities	..	Rs.10,000/-
Dress	..	Rs. 500/-
Pain and suffering	..	Rs.10,000/-
Disability	..	Rs.50,000/-
Total	..	Rs.98,500/-

17. In view of the above discussion, the award of the Tribunal is modified and enhanced on the above terms and the award granted by the Tribunal is enhanced from Rs.38,500/- to Rs.98,500 /-.

18. In view of the above, the Civil Miscellaneous Appeal is partly allowed and the compensation amount of Rs.38,500/- awarded by the Tribunal is hereby enhanced to Rs.98,500/-. The 2nd respondent Insurance company is directed to deposit the enhanced award amount of Rs.60,000/- with 7.5% interest from the date of claim petition till the date of deposit, after deducting the amount already deposited, if any, within a period of 8 weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw on filing the proper application before the Tribunal and on such application being filed, the Tribunal has to transfer the enhanced award amount directly to the personal savings bank account of the injured claimant through RTGS/NEFT system. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vs
To

The V Judge,
Court of Small Causes, Chennai.

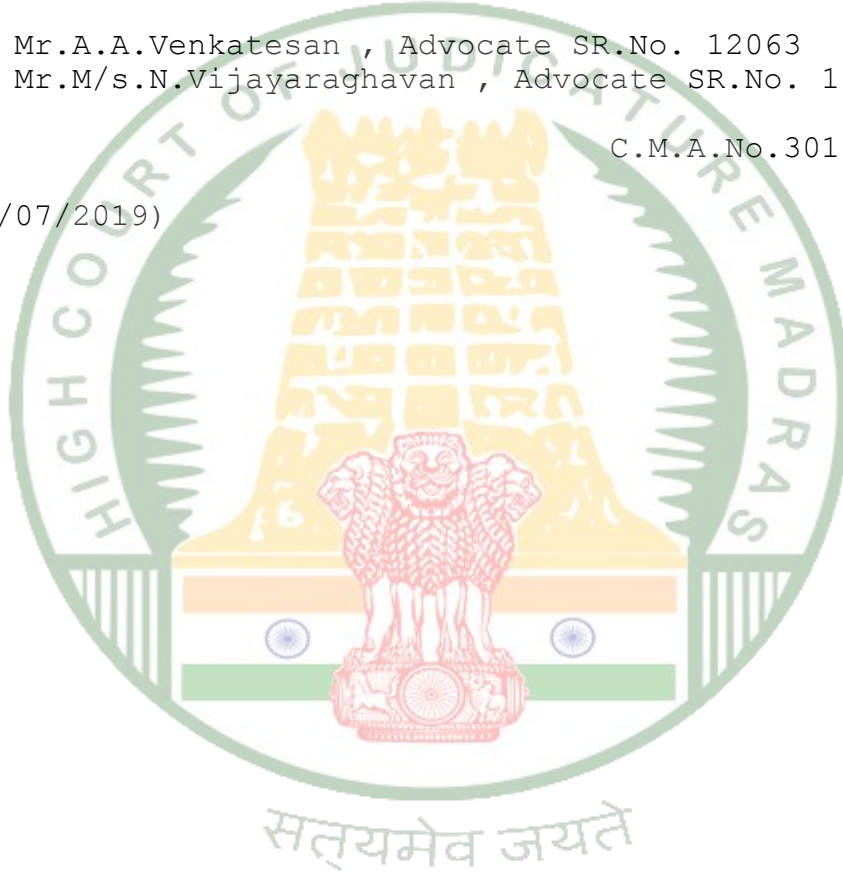
Copy to

The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr.A.A.Venkatesan , Advocate SR.No. 12063
+1cc to Mr.M/s.N.Vijayaraghavan , Advocate SR.No. 13641

C.M.A.No.3010 of 2010

A.SK(15/07/2019)



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