

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.1771 of 2012

P.Lilly Kumari

...Appellant/Petitioner

Vs.

1.P.Balakankathar Thilagar

2.The Oriental Insurance Co.Ltd.,
No.8, Esplanade Road,
LIC Buildings,
Chennai-108.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 07.11.2008, in M.C.O.P.No. 1890/2003, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, (Fast Track Court-1), Chennai.

For Appellant : Mr.P.Terry Chellaraja

For R1 : No appearance

For R2 : Mr.M.Krishnamurthy

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.1890 of 2003, on the file of the Motor Accidents Claims Tribunal, the Additional District and Sessions Judge (Fast Track Court No.1), Chennai. He has filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.1,50,000/- for the injuries sustained by him in a road accident that took place on 21.02.2003.

2. The brief case of the appellant/claimant is as follows:

(i) The appellant/claimant was aged 34 years on the date of the accident. He was working as Stenographer, earning a sum of Rs.7,500/- per month.

(ii) On 21.02.2003, at about 5.50 hours., the appellant/claimant was travelling in Motor-cycle as a pillion rider bearing Registration No. TN 07 T 1047 at Santhome High Road, Patinampakkam roundanna. At that time, a Tata Sumo bearing Registration No. TN 22 B 5799 driven by its driver with excessive speed in very rash and negligent manner, endangering the public safety and thereby, the pillion rider/claimant sustained grievous injuries. Due to the said accident, the appellant/claimant sustained (i) head injury and lacerated injury over the occipital region and (ii) multiple injuries all over the body.

(iii) Immediately, after the accident, the appellant/claimant was taken to Devaki Hospital, Chennai and was admitted as an in-patient for treatment. The rash and negligent riding of the rider of the above said Tata Sumo vehicle was the sole reason for the above said accident. There was no negligence on the part of the appellant/claimant.

3. The owner of the Tata Sumo bearing Registration No. TN 22 B 5799, was absent before the Tribunal, and therefore, he was set ex-parte. Before the Tribunal, on the side of the appellant/claimant, PW1 and PW2 were examined and Ex.P1 to Ex.P8 were marked. On the side of the respondents, no oral and document evidence was adduced. After going through the oral and documentary evidence adduced before the Court, the Tribunal awarded a sum of Rs.49,000/- together with interest at the rate of 9% per annum and directed the second respondent-Insurance Company to pay the said compensation to the appellant/claimant. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. After hearing both the parties and perusing the materials available on record, it is seen that the rash and negligence fixed on the part of the rider of the said Tata Sumo vehicle is not in dispute and the same is hereby confirmed.

5. The learned counsel appearing for the appellant/claimant would contend that in the above said accident, the appellant/claimant has suffered (i) head injury and lacerated injury over the occipital region and (ii) multiple injuries all over the body. He would contend that the appellant/claimant was admitted as an in-patient in the Devaki Hospital, Chennai. However, the Tribunal has awarded only a meagre amount as

compensation to the appellant/claimant. Therefore, he would contend that the compensation awarded by the Tribunal should be enhanced.

6. The learned counsel appearing for the Oriental Insurance Company Limited would contend that the disability suffered by the claimant was assessed at 45% by the Doctor. He would also contend that the award passed by the Tribunal under the other heads may also be enhanced.

7. P.W.2 Dr.Saravanabhavanandam had been examined in this case. He had filed disability certificate and X-ray showing the disability percentage of 45%. P.W.2 Doctor admitted that he had not examined the claimant and given any treatment to the claimant. Further, it is admitted that there is a possibility of fluctuation of 5% from one Doctor to another Doctor. The Doctor examined the patient after several years. Considering the disability certificate filed by the Doctor and on a careful appraisal of the same, the disability was fixed by the Tribunal at 20% in this case. Accordingly, the compensation was arrived at Rs.2,000/- for 1%, and for 20% disability, the Tribunal granted Rs.40,000/- towards disability.

8. Taking into consideration the deposition of Dr.Saravana bavanandam (PW2), the injuries sustained by the appellant/claimant, as could be seen from the documents Exhibits P2-discharge summary, Exhibit P4-medical certificate and Exhibit P6-medical report, it is seen that the claimant has suffered head injury and lacerated injury over the occipital region and multiple injuries all over the body, and this Court is of the considered opinion that the disability sustained by the appellant/claimant should be fixed at 45%. Since the accident is of the year 2003, awarding a sum of Rs.1,500/- per percentage of disability would meet the ends of justice. Accordingly, a sum of Rs.67,500/- is awarded towards 'disability'. (1500x45%)

9. Further, under the head "pain and suffering", the Tribunal awarded Rs.5,000/- and taking into consideration the suffering undergone by the claimant, it is hereby enhanced to Rs.8,000/-. With regard to "nutritious diet", the same is enhanced to Rs.8,000/- from Rs.2,000/-. With regard to "transportation", the Tribunal awarded Rs.2,000/- and the same is hereby enhanced to Rs.8,000/-. It is seen that due to the injuries suffered by the claimant, she could not attend her official duties, and hence, as there is no award under the heads 'loss of amenities', and 'loss of income', this Court awards the same in a sum of Rs.6,000/- and Rs.4,000/- respectively.

10. Accordingly, the award of the Tribunal in M.C.O.P.No.1890 of 2003 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Disability	Rs.40,000/-	Rs. 67,500/-
2.	Pain and sufferings	Rs. 5,000/-	Rs. 8,000/-
3.	Transportation	Rs. 2,000/-	Rs. 8,000/-
4.	Nutritious diet	Rs. 2,000/-	Rs. 8,000/-
5.	Loss of amenities	NIL	Rs. 6,000/-
6.	Loss of income	NIL	Rs. 4,000/-
	Total	Rs. 49,000/-	Rs. 1,01,500/-

The compensation awarded by the Tribunal is enhanced from Rs.49,000/- to Rs.1,01,500/- which shall carry interest at the rate of 7.5% per annum.

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.49,000/- to Rs.1,01,500/-.

(iii) The appellant/claimant is directed to pay the court fee, if any, for the enhanced compensation amount, and the Registry is directed to draft the decree only after the receipt of court fee.

(iv) The second respondent/Oriental Insurance Company Limited is directed to deposit the enhanced compensation amount awarded by this court, i.e., Rs.1,01,500/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 1890 of 2003 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, (Fast Track Court No.1), Chennai, within a period of eight weeks from the date of receipt of a copy of this judgment.

(v) On such deposit being made by the second respondent, the appellant/claimant is permitted to withdraw the same, in the manner known to law.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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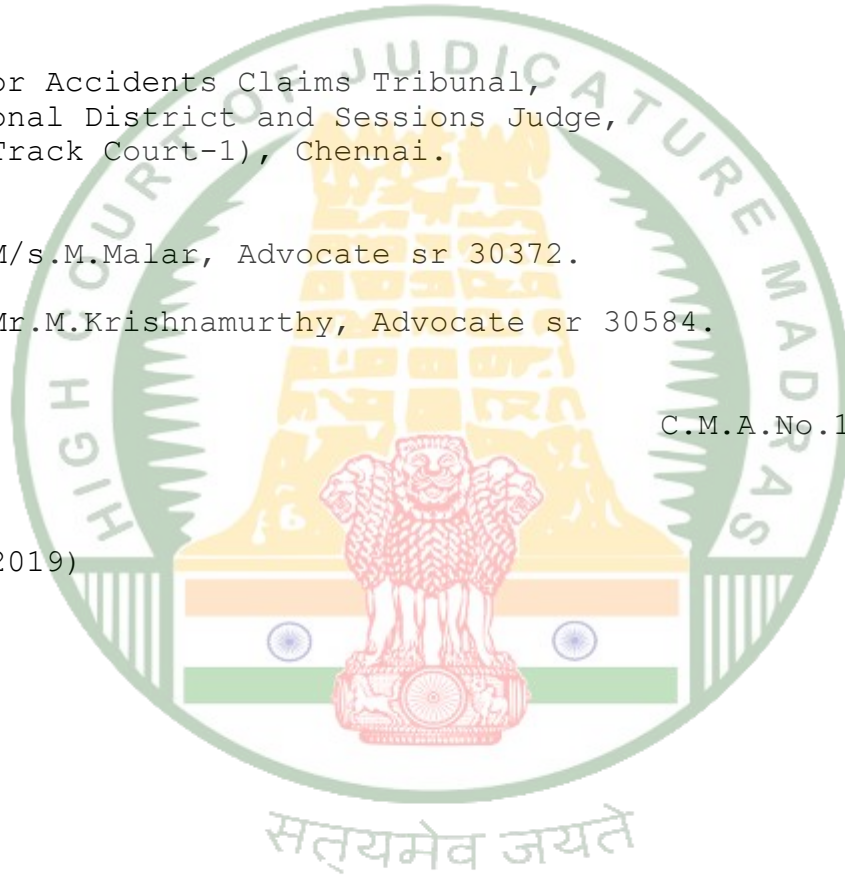
1.The Motor Accidents Claims Tribunal,
Additional District and Sessions Judge,
(Fast Track Court-1), Chennai.

+1 CC to M/s.M.Malar, Advocate sr 30372.

+1 CC to Mr.M.Krishnamurthy, Advocate sr 30584.

C.M.A.No.1771 of 2012

RSY(CO)
SP(13/06/2019)



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