

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.2339 & 2287 of 2011

B.Prabhu

... Appellant/Petitioner
(in CMA.No.2339/2011)

A.Ganesh Kumar

... Appellant/Petitioner
(in CMA.No.2287/2011)

Versus

1. Sun Pharmaceutical Industries,
Sdathammai Village, Karunguzhi,
Madhuranthagam Taluk,
Kancheepuram District.

2. The Oriental Insurance Co. Ltd.,
H.O.:United India Building,
Esplanade, Chennai - 108,
B.O:Kamala Arcade, II Floor,
No.669, Mount Road,
Chennai 600 006.

(First respondent remained exparte
before the Tribunal)

... Respondents in both CMAs

Common Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 22.09.2010 made in M.C.O.P.Nos.2251 & 2257 of 2005 on the file of the II Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.A.Shanmugaraj
in both the CMAs

For R2 : Mrs.R.Sreevidhya
in both the CMAs

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

Both the above appeals have been filed by the claimants seeking for enhancement of compensation amounts awarded by the II Judge Small Causes Court (Motor Accidents Claims Tribunal), Chennai, dated 22.09.2010 made in M.C.O.P.Nos. 2251 & 2257 of 2005.

2. The claimant B.Prabhu is the appellant in CMA.No.2339 of 2011 against M.C.O.P.No.2251 of 2005. The claimant A.Ganesh Kumar is the appellant in CMA.No.2287 of 2011 against M.C.O.P.No.2257 of 2005.

3. Both the claim petitions have been filed before the Tribunal alleging that on 21.12.2003 at about 4.50p.m the petitioner in M.C.O.P.No.2257 of 2005 A.Ganesh Kumar was riding the motor cycle bearing Registration No. TN 07 T 9808 with the petitioner in M.C.O.P.No.2251 of 2005 B.Prabhu as Pillion rider along Anna Salai, Chennai. While so, the driver of the Car GJ 16 C 5858 drove the car in a rash and negligent manner endangering the public safety and came at a dangerous speed and dashed against the petitioners on the back side and thus caused grievous injuries. The accident took place only due to rash and negligent driving of the driver of the car. The first respondent being the owner and the second respondent being the insurer of the car are jointly and severally liable to pay compensation. Therefore, the claimants have filed claim petitions in M.C.O.P.Nos.2251 & 2257 of 2005, claiming a sum of Rs.1,39,000/- and Rs.47,000/- respectively as compensation.

4. Before the Tribunal, the claimant in MCOP.No.2251 of 2005 was examined as P.W.1, the claimant in MCOP.No.2257 of 2005 was examined as P.W.2 and one Dr.J.R.R.Thiagarajan was examined as P.W.3. On the claimants' side, eighteen documents, namely Exs.P1 to P18 were marked. On the respondents' side, no oral or documentary evidence was adduced. After going through the oral and documentary evidences, the Tribunal has come to a conclusion that the accident took place on 21.12.2003, due to rash and negligent driving of the driver of the said car. As far as compensation is concerned, the Tribunal awarded a sum of Rs.1,39,000/- and Rs.47,000/- respectively to the claimants/appellants herein.

5. This Court finds that the finding of the Tribunal that the accident has taken place due to rash and negligent of the driving of the first respondent car which is duly insured with the second respondent/insurance Company (Before the Tribunal), the same is hereby confirmed.

6. On the point of quantum heard both the parties.

CMA.No.2339 of 2011 against M.C.O.P.No.2251 of 2005:-

7. The injured B.Prabhu was examined as P.W.1, Ex.P3 is the discharge summary given by the Government General Hospital, Chennai. P.W.3 Dr.J.R.R.Thiagarajan was examined by the petitioner on 27.07.2009. Ex.P16 is the disability certificate and P.17 is the X-ray. He has deposed that the left frontal brain has not been functioning as per the scan and E.E.C Reports. Due to that, the movement of the hands and legs of the petitioner have been reduced. The petitioner is having difficulty in walking and suffering headache, pain and giddiness and loss of memory power. Further, P.W.3 deposed that the petitioner suffered nasal bone fracture, Nasal path shrunk and loss of smelling power. He has assessed the

disability as 40+25=65%. P.W.3 was recalled and further re-cross examined by the second respondent. P.W.3 has admitted that he has not conducted examination with the memory chart and also Ammonia Test for the loss of memory and smelling power. Therefore, the disability is fixed as 35+15=50% on the basis of Exs.P.4, P.10 and P.11.

8. Accordingly, after perusing Ex.P3 Discharge Summary and Ex.P16 Disability Certificate of P.W.1, the Tribunal has come to the conclusion that the disability is a partial permanent disability. Aggrieved by the same, the claim petitioner in M.C.O.P.No. 2251 of 2005 is before this Court. Taking into account of the cross examination of P.W.3, in which he has categorically admitted that he has not conducted any examination with the memory chart and also Ammonia Test for the loss of memory and smelling power, accordingly, partial permanent disability was fixed by the Tribunal and the same is hereby confirmed.

9. Taking note of the relevant points, the Tribunal, which has awarded a compensation of permanent disability at Rs.1,00,000/- is confirmed. It is said that he had taken treatment and also he was unable to attend his duty for a period of three months. Accordingly, for the Loss of earnings during treatment, a sum of Rs.9,000/- was awarded and the same is also confirmed. Transportation was fixed at Rs.1000/- and the same is enhanced to Rs.5,000/-, Extra Nourishment was fixed at 2000/- and the same is enhanced to Rs.10,000/-, The Tribunal has not awarded any amount towards Attendant charges and now a sum of Rs.5,000/- is fixed for Attendant charge. Towards Loss of amenities, the Tribunal has not awarded any amount, taking into consideration, that due to the accident, the claim petitioner lost his memory and smelling power a sum of Rs.30,000/- is fixed. Thus, the break up details of the award amount is hereby modified and enhanced are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Permanent Disability	Rs.1,00,000/-	Rs.1,00,000/-
Loss of earnings during treatment	Rs.9,000/-	Rs.9,000/-
Transport to Hospital	Rs.1,000/-	Rs.5,000/-
Extra Nourishment	Rs.2,000/-	Rs.10,000/-
Medical expenses	Rs.12,000/-	Rs.12,000/-
Pain and suffering	Rs.15,000/-	Rs.15,000/-
Attendant charges	---	Rs.5,000/-
Loss of Amenities	----	Rs.30,000/-
Total	Rs.1,39,000/-	Rs.1,86,000/-

CMA.No.2287 of 2011 against M.C.O.P.No.2257 of 2005:-

10. The injured A.Ganesh Kumar was examined as P.W.2 and O.P Chit issued by the Government General Hospital, Chennai was marked as Ex.P12. P.W.3 Dr.Thiagarajan has been examined by the claim petitioner and Ex.P18- disability certificate has been marked through him. He has categorically mentioned that the claim petitioner has not sustained any fracture and taking into fact that the claim petitioner sustained loss of flesh and fibres cut in the right foot. The Tribunal has fixed the disability at 15%. After going through the disability fixed at 20% the permanent disability is fixed at Rs.40,000/- (2000x20=40,000/-), and towards loss of earning the Tribunal has awarded a sum of Rs.3,000/- and the same is enhanced to Rs.6,000/-. Transportation is enhanced to Rs.5,000/-, extra nourishment is enhanced to Rs.10,000/-, Medial expenses is confirmed as awarded by the Tribunal at Rs.1,000/-, Pain and sufferings is enhanced to Rs.15,000/- and loss of amenities is fixed at Rs.5,000/-.

Description	Amount awarded by Tribunal	Amount awarded by this Court
Permanent Disability	Rs.30,000/-	Rs.40,000/-
Loss of earnings during treatment	Rs.3,000/-	Rs.6,000/-
Transport to Hospital	Rs.1,000/-	Rs.5,000/-
Extra Nourishment	Rs.2,000/-	Rs.10,000/-
Medical expenses	Rs.1,000/-	Rs.1,000/-
Pain and suffering	Rs.10,000/-	Rs.15,000/-
Loss of Amenities	----	Rs.5,000/-
Total	Rs.47,000/-	Rs.82,000/-

11. In the result, both the appeals are partly allowed to the extent indicated above and the compensation awarded by the Tribunal at Rs.1,39,000/-in MCOP.No. 2251 of 2005 is hereby enhanced to Rs.1,86,000/- and the compensation awarded by the Tribunal at Rs.47,000/- in MCOP.No.2257 of 2005 is hereby enhanced to Rs.82,000/-. Both the amounts shall carry interest at the rate of 7.5% per annum from the date of claim petitions till the date of realisation. The second respondent/Insurance company is directed to deposit the modified and enhanced award amounts along with interest and costs, less the amounts, if any already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the appellants/claimants in the both appeals, are permitted to withdraw the modified and enhanced award amounts along with interest and costs, after adjusting the amounts if any, already withdrawn by them. The claimants in the both appeals shall pay

necessary court fee, if any, on the enhanced compensation. No costs.

Sd/-
Assistant Registrar(CO MDU)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal
(II Small Causes Court), Chennai.

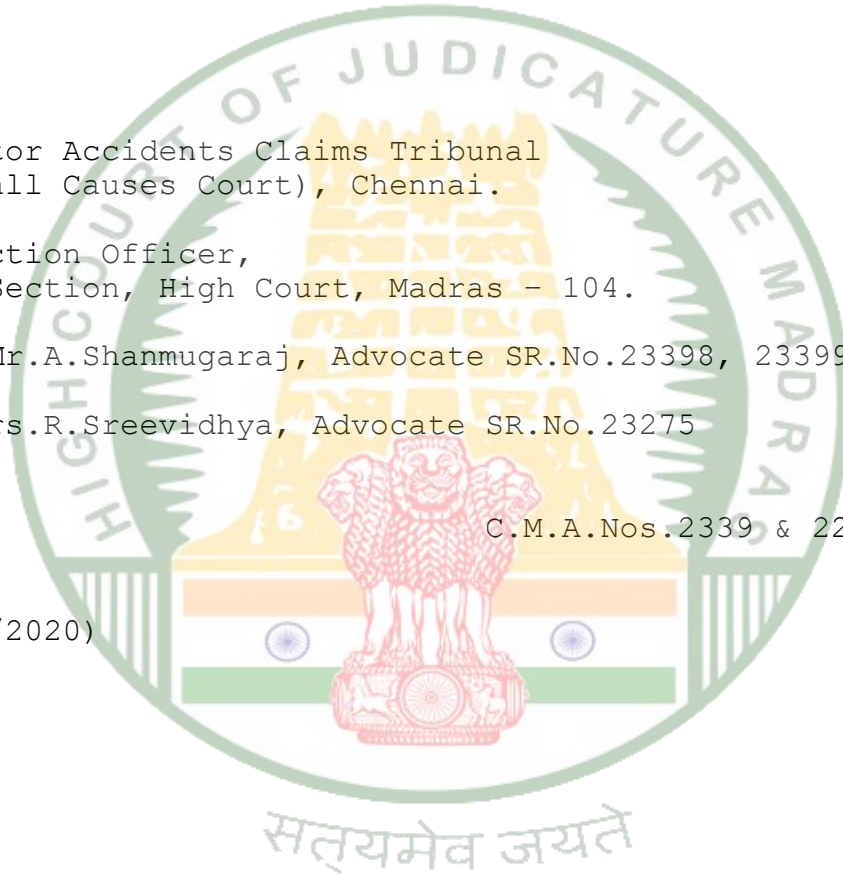
2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+2ccs to Mr.A.Shanmugaraj, Advocate SR.No.23398, 23399

+1cc to Mrs.R.Sreevidhya, Advocate SR.No.23275

C.M.A.Nos.2339 & 2287 of 2011

KJ(CO)
GMY(10/11/2020)



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