



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1981 & 1982 of 2015

C. Rajesh Barfa

.. Appellant in  
C.M.A.No.1981/2015

M.Ramesh

.. Appellant  
in C.M.A.No.1982/2015

Vs.

1.Anithaa Lakshmi

(Since the first respondent remained exparte before the  
Tribunal. Hence, her presence is dispensed with)

2.Cholamandalam MS General Insurance Co. Ltd.,  
No.1, Village Street,  
Wajeeva Corporate Centre,  
III Floor,  
Chennai 34.

.. Respondents in both appeals

Common Prayer: These Civil Miscellaneous Appeals are filed under  
Section 173 of Motor Vehicles Act, 1988, against the common  
award dated 13.01.2015, made in M.C.O.P.Nos.4840 & 4841 of 2012,  
on the file of the V Judge, Small Causes Court, (Motor Accident  
Claims Tribunal), Chennai.

(In both appeals)

For Appellant : Mr.F. Terry Chella Raja

For R2 : Ms. C. Harini  
for M/s. M.B. Raghavan

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

These Civil Miscellaneous Appeals have been filed for  
enhancement of the compensation granted by the Tribunal in the  
common award dated 13.01.2015, made in M.C.O.P.Nos. 4840 & 4841  
of 2012, on the file of the V Judge, Small Causes Court, (Motor  
Accident Claims Tribunal), Chennai.



2. Since both the appeals arise out of the same accident and common award, they are disposed of by this common judgment.

3. The appellant/claimant in both the appeals filed M.C.O.P.Nos.4840 & 4841 of 2012, on the file of the V Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.10,00,000/- each as compensation for the injuries sustained by them in the accident that took place on 17.07.2012.

4. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the van belonging to the 1<sup>st</sup> respondent and directed the 2<sup>nd</sup> respondent-Insurance Company to pay a sum of Rs.3,10,200/- and Rs.5,96,100/- as compensation to the appellant/claimant in both the appeals respectively, at the first instance and recover the same from the 1<sup>st</sup> respondent, owner of the vehicle.

5. Not being satisfied with the amounts awarded by the Tribunal in the common award dated 13.01.2015, made in M.C.O.P.Nos. 4840 & 4841 of 2012, the appellants/claimants have come out with the present appeals.

6(a). Learned counsel appearing for the appellants contended that as far as the appellant in C.M.A.No.1981 of 2015 [M.C.O.P.No.4840 of 2012] is concerned, he was running a spare parts shop under the name and style "Shri Rajeshwari Automobiles" and earning a sum of Rs.25,000/- per month and marked Certificate of Registration and Income Tax Return for the assessment year 2011 & 2012 as Exs.P14 & P15, to substantiate the same. The Tribunal failed to consider the same and grant loss of income. Due to the accident, the appellant sustained fracture of left clavicle and underwent surgery. P.W.3-Doctor assessed the disability of the appellant as 40%, but the Tribunal without assigning proper reasons, reduced the same to 35% and granted meagre amount towards permanent disability. The amounts awarded by the Tribunal under other heads are meagre and prayed for enhancement of the same.

6(b). As far as the appellant in C.M.A.No.1982 of 2015 [M.C.O.P.No.4841 of 2012] is concerned, the learned counsel appearing for the appellant contended that he was working as a shop keeper in "Shri Rajeshwari Automobiles" and earning a sum of Rs.8,000/- per month. The Tribunal erred in fixing only a meagre sum of Rs.6,500/- as the monthly income. Due to the accident, the appellant suffered fracture of left femur and P.W.3-Doctor assessed the disability of the appellant as 55%. The Tribunal without assigning any reasons, reduced the same to 45% and granted meagre amount towards permanent disability. In



any event, the compensation awarded by the Tribunal under other heads are meagre and prayed for enhancement of the same.

7. Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company contended that the Tribunal considering all the materials on record in entirety, has awarded compensation in both the claim petitions, which are not meagre. The appellants have not made out any case for enhancement of the compensation and hence, prayed for dismissal of both the appeals.

8. Heard the learned counsel appearing for the appellants as well as the 2<sup>nd</sup> respondent and perused the materials available on record.

9(a). From the materials on record, it is seen that as far as M.C.O.P.No.4840 of 2012 [C.M.A.No.1981 of 2015] is concerned, the appellant claimed that he was a proprietor of "Shri Rajeshwari Automobiles" and was earning a sum of Rs.25,000/- per month. To prove the same, he has filed Ex.P14- Certificate of Registration and Ex.P15 - Income Tax Returns. The Tribunal failed to fix the monthly income and grant any amount towards loss of income. Considering Ex.P15 - Income Tax Returns, the monthly income of the appellant is fixed at Rs.10,000/-. Due to the accident, the appellant suffered fracture of left clavicle and took treatment as in-patient from 17.07.2012 to 20.07.2012 and underwent surgery on 18.07.2012. P.W.3-Doctor assessed disability of the appellant as 40% and issued disability certificate, which is marked as Ex.P32. The reason given by the Tribunal for reducing the percentage of disability to 35% is not correct. Considering the nature of injuries and deposition of P.W.3-Doctor, the disability is fixed at 40% and a sum of Rs.1,20,000/- is granted towards disability, by awarding Rs.3,000/- per percentage for 40% disability. Due to the injuries sustained in the accident, the appellant would not have worked for atleast three months. In view of the same, the appellant is entitled to a sum of Rs.30,000/- towards loss of income for three months. The Tribunal considering all the materials on record and the nature of injuries suffered by the appellant, has granted lumpsum amount of Rs.25,000/- towards transportation, nourishing food, damage to clothes and miscellaneous expenses. The same is not meagre. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

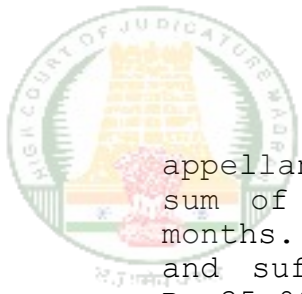
| S. No | Description | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|-------|-------------|---------------------------------|-----------------------------------|----------------------------------------|
|-------|-------------|---------------------------------|-----------------------------------|----------------------------------------|



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|    |                                                                                |            |            |                         |
|----|--------------------------------------------------------------------------------|------------|------------|-------------------------|
| 1. | Transportation, nourishing food, damage to clothes & miscellaneous expenditure | 25,000/-   | 25,000/-   | Confirmed               |
| 2. | Medical expenses                                                               | 79,200/-   | 79,200/-   | Confirmed               |
| 3. | Attender charges                                                               | 1,000/-    | 1,000/-    | Confirmed               |
| 4. | Damages for pain, suffering and trauma                                         | 25,000/-   | 25,000/-   | Confirmed               |
| 5. | Loss of amenities                                                              | 25,000/-   | 25,000/-   | Confirmed               |
| 6. | Loss of income                                                                 | -          | 30,000/-   | Granted                 |
| 7. | Future medical expenses                                                        | 50,000/-   | 50,000/-   | Confirmed               |
| 8. | Disability                                                                     | 1,05,000/- | 1,20,000/- | Confirmed               |
|    | Total                                                                          | 3,10,200/- | 3,55,200/- | Enhanced by Rs.45,000/- |

9(b).As far as M.C.O.P.No.4841 of 2012 [C.M.A.No.1982 of 2015] is concerned, the appellant contended that he suffered fracture of left femur and took treatment as in-patient in Hospital in two spells viz., 17.07.2012 to 26.07.2012 and 06.09.2012 to 11.09.2012 and underwent two surgeries. P.W.3-Doctor assessed the disability as 55% and produced Ex.P34 - Disability certificate to substantiate the same. The reason given by the Tribunal for reducing the percentage of disability to 45% is not correct. Considering the nature of injuries and the deposition of P.W.3 Doctor, the disability is fixed at 55% and a sum of Rs.1,65,000/- is granted towards disability by awarding Rs.3,000/- per percentage for 55% disability. The appellant contended that he was working as a shop keeper and earning a sum of Rs.8,000/- per month. To substantiate the same, he has marked Ex.P18-salary certificate. The Tribunal without considering the same, has fixed a meagre sum of Rs.6,500/- as monthly income. The same is erroneous. Considering the salary certificate marked as Ex.P18, the monthly income of the appellant is fixed at Rs.8,000/-. Due to the injuries, the



appellant would not have worked atleast for 10 months. Hence, a sum of Rs.80,000/- is granted towards loss of income for 10 months. The Tribunal has granted a meagre amount towards pain and suffering and attender charges. The same is enhanced to Rs.35,000/- and Rs.20,000/- respectively. The amounts granted by the Tribunal under other heads are just and reasonable and hence, they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

| S. No | Description                                                                    | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|-------|--------------------------------------------------------------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Transportation, nourishing food, damage to clothes & miscellaneous expenditure | 25,000/-                        | 25,000/-                          | Confirmed                              |
| 2.    | Attender charges                                                               | 5,000/-                         | 20,000/-                          | Enhanced                               |
| 3.    | Medical expenses                                                               | 2,42,100/-                      | 2,42,100/-                        | Confirmed                              |
| 4.    | Future medical expenses                                                        | 1,00,000/-                      | 1,00,000/-                        | Confirmed                              |
| 5.    | Loss of earning during the treatment period                                    | 39,000/-                        | 80,000/-                          | Enhanced                               |
| 6.    | Disability                                                                     | 1,35,000/-                      | 1,65,000/-                        | Enhanced                               |
| 7.    | Damages for pain, suffering & trauma                                           | 25,000/-                        | 35,000/-                          | Enhanced                               |
| 8.    | Loss of amenities                                                              | 25,000/-                        | 25,000/-                          | Confirmed                              |
|       | Total                                                                          | 5,96,100/-                      | 6,92,100/-                        | Enhanced by Rs.96,000/-                |

10. In the result, both the appeals are partly allowed and amount awarded by the Tribunal at Rs.3,10,200/- and Rs.5,96,100/- are enhanced to Rs.3,55,200/- and Rs.6,92,100/- respectively along with interest and costs. The 2<sup>nd</sup> respondent-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and



costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.Nos.4840 & 4841 of 2012 respectively at the first instance and recover the same from the 1<sup>st</sup> respondent. On such deposit, the appellant/claimant in both the appeals are permitted to withdraw their respective enhanced award amount, less the amount already withdrawn, if any, by filing necessary applications before the Tribunal. No costs.

Sd/-

Deputy Registrar(CCAA)

//True Copy//

Sub Assistant Registrar

gsa

To

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

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

+2cc to M/s.M.Malar, Advocate, S.R.No.103882 & 103883

+2cc to Mr.N.Vijaya Raghavan, Advocate, S.R.No.103373, 103374

C.M.A.Nos.1981 & 1982 of 2015

RGN(CO)  
CB(16/11/2021)