



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN  
C.M.A.No.1981 Of 2012

A.Sekar

... Appellant/ Petitioner

-Vs-

1. M.V.Kumaresan

2.The New India Assurance Co. Ltd.,  
No.46, Armenian Street, Parrys,  
Chennai - 600 001.

... Respondents/Respondents

[ R1 was set ex-parte in the Trial Court

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 11.04.2011 made in M.C.O.P.No. 176 of 2010 on the file of, Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court, No.1, Poonamalle.

For Appellant : Mr.C. Prabakaran for  
V.Jagannathan

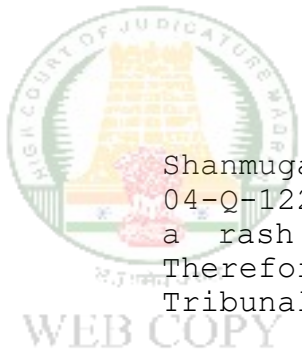
For Respondents : Mr.J. Chandran (for R2)

#### JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 11.04.2011 made in M.C.O.P.No. 176 of 2010 on the file of, Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court, No.1, Poonamalle.

2.The brief facts, which are necessary to decide the appeal and the relevant particulars, are as follows:-

The appellant is the Claimant, the first respondent is the owner of the vehicle involved in the accident and the second respondent is the Insurer of the alleged vehicle involved in the accident. On 22.01.2010 at about 16:30 hours when the claimant was walking on the left side of Ambattur to Redhills road at



Shanmugapuram, the 1<sup>st</sup> respondent van bearing Registration No.TN-04-Q-1224 driven by its driver came in the opposite direction in a rash and negligent manner and hit against the claimant. Therefore, the claimant filed a claim petition before the Tribunal seeking compensation of Rs.5,00,000/-

3. Before the Tribunal on the side of the appellant 2 witnesses was examined, 8 exhibits were marked and 2 material objects were marked. On the side of the respondents, neither oral nor documentary evidence was adduced.

Appellant side witnesses and exhibits.

PW.1 was none other than the claimant

PW.2 was Dr. Saravabhavanandha who assessed disability for the claimant.

Ex.1 P1.F.I.R

Ex.2 P2 Rought Sketch

Ex.3 P3 Discharge summary

Ex.4 P4 Scan report

Ex.5 P5 Treatment records

Ex.6 P6 Policy copy

Ex.7 P7 Copy of driving license

Ex.8 P8 Disability certificate

4. PW.2 Dr. Saravabhavanandha in his evidence has stated that he had examined the claimant and observed following deficiencies viz: complete avulsion of left ear, left ear removed, laceration in right mastri region and over right eye brow, laceration behind right ear and multiple injuries all over the body, hence assessed disability at 30%. But, the Tribunal has considered only 20%, which requires modification.

5. The Tribunal after analyzing the above witnesses and exhibits adduced before it, computed the compensation payable to the claimant under various heads and awarded a sum of Rs. 45,000/- as compensation. Not being satisfied with the quantum of compensation, the claimant/appellant herein has preferred this present appeal.

6. The learned counsel appearing for the appellant/claimant would contend that the Tribunal has awarded a meager amount of compensation. He further contend that the PW-2 Doctor assessed Disability as 30% but the Tribunal has taken only 20% awarded Rs.20,000/- under the head disability and prays to allow this appeal.

7. The learned counsel for the second respondent/ Insurance



Company would justify the award passed by the Tribunal is the one which is proportionate to the nature of injuries sustained by the claimant and prayed for dismissal of this appeal.

8. Thus, after analyzing the relevant materials this Court is of the considered opinion that the head disability is refixed at 30%, hence the award amount under this head is enhanced to Rs.75,000/- and all the other heads is enhanced except the head loss of income and medical expenditure.

9. Thus, the award amount is enhanced from Rs.45,000/- to Rs.75,000/- under the following heads:

| Description                             | Amount awarded by Tribunal | Amount awarded by this Court |
|-----------------------------------------|----------------------------|------------------------------|
| Loss of Income during treatment         | Rs.5,000/-                 | Rs.5,000/-                   |
| Transportation                          | Rs.5,000/-                 | Rs.10,000/-                  |
| Extra nourishment                       | Rs.5,000/-                 | Rs.10,000/-                  |
| Medical Expenses                        | Rs.5,000/-                 | Rs.5,000/-                   |
| Pain and suffering                      | Rs.5,000/-                 | Rs.5,000/-                   |
| Loss of future amenities and Disability | Rs.20,000/-                | Rs.40,000/-                  |
| Total                                   | Rs.45,000/-                | Rs.75,000/-                  |

10. In the result,

(i) this Civil Miscellaneous Appeal is partly allowed and the compensation amount of Rs.45,000/- awarded by the Tribunal is hereby enhanced to Rs.75,000/-, with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation.

(ii) the Insurance Company is directed to deposit the award amount, less the amount if any already deposited, within a period of 12 weeks from the date of receipt of the copy of this Judgment.

(iii) On such deposit being made, the appellant/claimant is permitted to withdraw the same, after adjusting the amount if any, already withdrawn.

(iv) The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. No costs.  
smn

Sd/-  
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar



To

1. The Motor Vehicles Accident Claims Tribunal,  
Additional District Judge,  
Fast Track Court No.1,  
Poonamallee.

Copy to:-

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

+1cc to Mr.J.Chandran, Advocate, SR.No.30914/19

CMA No.1981 of 2012

Kak(03/09/2019)