

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.566 of 2011

1.N.Vasantha ... Appellant/Petitioner

..Vs..

1.N.Venkatraman  
(R1 ex-parte in Lower Court)

2.The New India Assurance Company Limited,  
No.45, Moore Street,  
Chennai - 1. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 16.06.2010, in M.C.O.P.No. 1535 of 2006 on the file of the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, Chennai.

For Appellant : Mr.Gangaram Prasad

For Respondents : Mr.R.Ravichandran for  
for Mrs.R.Sreevidhya for R2

JUDGMENT

The appellant is the claimant in M.C.O.P.No. 1535 of 2006, on the file of the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, Chennai. She filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of M.A.C.T. Rules seeking compensation of Rs.3,50,000/- for the injuries sustained by her in a road accident that took place on 27.02.2006, at about 10.00 hours, when she was crossing Burkit road, Chennai along with her daughter.

2.According to appellant/claimant, a speeding car bearing Registration No. TN 09 AB 1480 belonging to the first respondent, hit her as well as her daughter, as a result of which, both of them sustained multiple injuries. It is further contented by her that the rash and negligent driving of the

driver of the car bearing Registration No. TN 09 AB 1480 belonging to the first respondent was the cause of the accident and that since the said car was insured with the second respondent, the New India Assurance Company Limited, both of them are jointly and severally liable to pay compensation to her.

3.The owner of the car bearing Registration No. TN 09 AB 1480 remained absent before the tribunal and therefore, he was set ex-parte. The second respondent, the New India Assurance Company Limited contested the claim petition. The learned Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, Chennai after analysing the evidence on record, awarded a compensation of Rs.1,00,450/- together with interest at the rate of 7.5% per annum to the claimant.

4.Not satisfied with the quantum of compensation awarded by the tribunal, the appellant/claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5.Mr.Gangaram Prasad, learned counsel appearing for the appellant/claimant would contend that when it is contended by the claimant that she was earning a sum of Rs.4,500/- per month, the tribunal has fixed the monthly income of the claimant as only Rs.3,000/- per month. It is also his contention that no amount was awarded towards loss of income and attender's charges, especially, when the claimant was hospitalized continuously for 58 days. His another contention is that when Dr.Thiagarajan (PW3) has assessed the partial permanent disability as 55%, the tribunal has reduced the percentage to 40% without assigning any reason and awarded a very meagre amount of Rs.60,000/- towards partial permanent disability. He would therefore contend that the award should be enhanced under each head.

6.Per contra, Mr.R.Ravichandran, learned counsel appearing for the second respondent would contend that the tribunal after considering various aspects, awarded a just compensation and the same need not be disturbed at this juncture.

7.A perusal of the discharge summary (Ex.P2) shows that the appellant/claimant has sustained a fracture of second, third metatarsal shaft right and an operation was performed for fixing K-wire. As rightly pointed out by the learned counsel appearing for the appellant, Dr.Thiagarajan (PW3) has assessed the partial permanent disability as 55% and the tribunal has reduced the percentage of disability to 40% without assigning any reason. However, the tribunal was right in fixing the monthly income of the appellant/claimant as Rs.3,000/- since no proof of income was adduced. The various heads under which the tribunal awarded

compensation is extracted hereunder:

| S.No. | Head                         | Amount granted |
|-------|------------------------------|----------------|
| 1.    | Loss of earning              | Rs.18,000/-    |
| 2.    | Transportation               | Rs.5,000/-     |
| 3.    | Extra nourishment            | Rs.5,000/-     |
| 4.    | Medical expenses             | Rs.2,450/-     |
| 5.    | Pain and sufferings          | Rs.10,000/-    |
| 6.    | Partial Permanent disability | Rs.60,000/-    |
| Total |                              | Rs.1,00,450/-  |

8. There is no functional disability and considering the nature of injuries sustained by the claimant, this court feels that awarding a sum of Rs.1,10,000/- (55% x Rs.2,000/-) under the head partial permanent disability would meet the ends of justice. Since, the records shows that the appellant/claimant was hospitalized for a period of 58 days, a sum of Rs.10,000/-, Rs.10,000/- and Rs.25,000/- are awarded towards transportation, extra nourishment and pain sufferings respectively. Apart from that amount, the appellant/claimant is also entitled to a sum of Rs.10,000/- towards loss of amenities and Rs.5,000/- towards attender's charges. The enhanced compensation amount awarded by this court under various heads is extracted hereunder:

| S.No. | Head                         | Amount granted |
|-------|------------------------------|----------------|
| 1.    | Loss of earning              | Rs.18,000/-    |
| 2.    | Transportation               | Rs.10,000/-    |
| 3.    | Extra nourishment            | Rs.10,000/-    |
| 4.    | Medical expenses             | Rs.2,450/-     |
| 5.    | Pain and sufferings          | Rs.25,000/-    |
| 6.    | Partial Permanent disability | Rs.1,10,000/-  |
| 7.    | Loss of amenities            | Rs.10,000/-    |
| 8.    | Attender's charges           | Rs.5,000/-     |
| Total |                              | Rs.1,90,450/-  |

Thus the appellant/claimant is entitled to a sum of Rs.1,90,450/- together with interest at the rate of 7.5% per annum.

9. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the tribunal is enhanced

from Rs.1,00,450/- to Rs.1,90,450/-.

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

(iv)The second respondent / the New India Assurance Company Limited is directed to deposit the enhanced compensation amount (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. 1535 of 2006, on the file of the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, Chennai within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the second respondent, the appellant/claimant is at liberty to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal, IV Judge,  
Court of Small Causes, Chennai.
2. The Section Officer,  
V.R.Section, High Court, Madras.

+1 cc to M/s.G.Balaji Prasad, Advocate, Sr.No. 7843

+1 cc to M/s.R.Sree Vidhya, Advocate, Sr.No. 8291

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CSL/03.05.2019

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