

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1802 of 2016

R.Sasikala

.. Appellant/Petitioner

Vs.

1.V.Baskar

2.The Divisional Manager,
United India Insurance Company Ltd.,
South Gopauram Street,
Villianur
Pondicherry - 605 110. .. Respondents /Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 (1) of Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.03.2015 and made in M.A.C.T.O.P.No.641 of 2011, on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Puducherry.

For Appellant : Mr.D.Ravichander

For R2 : Mr.M.J.Vijayaraghavan

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the award dated 12.03.2015 and made in M.A.C.T.O.P.No.641 of 2011, on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Puducherry.

2.The appellant is claimant in M.A.C.T.O.P.No.641 of 2011, on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Puducherry. She filed the said claim petition claiming a sum of Rs.6,70,000/- as compensation for the injuries sustained by her in the accident that took place on 02.09.2010. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 1st respondent/rider-cum-owner of the motorcycle and fixed 75% negligence on the part of the 1st respondent and 25% negligence on the appellant and directed the 2nd respondent being the insurer of the 1st respondent's vehicle, to pay a sum of Rs.81,510/- being 75% of the award amount as

compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellant contended that the appellant suffered injuries in the accident and has taken treatment as in-patient from 02.09.2010 to 05.09.2010 in Government Hospital and from 14.09.2010 to 20.09.2010 in MIOT Hospital, Chennai. The Tribunal failed to consider that the appellant would have suffered more pain and erroneously awarded only Rs.15,000/- towards pain and suffering. The amount awarded by the Tribunal for pain and suffering and under different heads are meagre. The Tribunal failed to follow the judgment of the Hon'ble Apex Court while awarding compensation. The Tribunal ought to have awarded more compensation for disfigurement. The Tribunal erred in fixing 25% negligence on the appellant without giving any valid reasons and prayed for setting aside the portion of award fixing 25% negligence on the appellant and for enhancement of compensation.

4.Per Contra, Mr.M.J.Vijayaraghavan, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the the appellant sustained only simple injuries and no Doctor was examined and the appellant has not filed any disability certificate. The Tribunal considering the entire materials on record awarded compensation which are not meagre and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the materials on record.

6.From the materials on record, it is seen that the Tribunal considering Ex.P1-copy of F.I.R and evidence of appellant as P.W.1 held that rider of the Hero Honda C.D Dawn drove the same in a rash and negligent manner and driver of the Hero Honda C.D Dawn alone is responsible for the accident. The Tribunal erroneously fixed contributory negligence of 25% on the part of the appellant and the same is liable to be set aside. The appellant has taken treatment in hospital as in-patient from 02.09.2010 to 05.09.2010 in Government Hospital and from 14.09.2010 to 20.09.2010 in MIOT Hospital, Chennai in two different periods. The appellant has contended that due to the injuries she suffered facial disfigurement and the Tribunal has awarded Rs.15,000/- for facial disfigurement. The appellant has not filed any materials to show that she suffered any disability. The Tribunal has not awarded any amount towards loss of amenities and attendant charges. A sum of Rs.15,000/- and Rs.25,000/- awarded towards attendant charges and loss of amenities respectively. The Tribunal has awarded a sum of Rs.5,000/- and Rs.15,000/- towards extra nourishment and facial

disfigurement which are meagre and the same are enhanced to Rs.15,000/- and Rs.30,000/- respectively. The amount awarded by the Tribunal under other heads are just compensation and hence they are confirmed. Thus, the amounts granted 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.	Pain and Sufferings	15,000	15,000	Confirmed
2.	Medical Expenses	62,000	62,000	Confirmed
3.	Extra Nourishment	5,000	15,000	Enhanced
4.	Traveling Expenses	11,500	11,500	Confirmed
5.	Facial Disfiguration	15,000	30,000	Enhanced
6.	Photographs Charges	180	180	Confirmed
7.	Loss of Amenities	-	25,000	Granted
8.	Attendant Charges	-	15,000	Granted
	Total	1,08,680 (75% of the award amount comes to) 81,510/-	1,73,680	Enhanced by Rs.92,110/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.81,510/- is hereby enhanced to Rs.1,73,680/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount along with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is

permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

rst/gbi

To

1. The III Judge,
Motor Accidents Claims Tribunal,
Additional District Court, Puducherry.

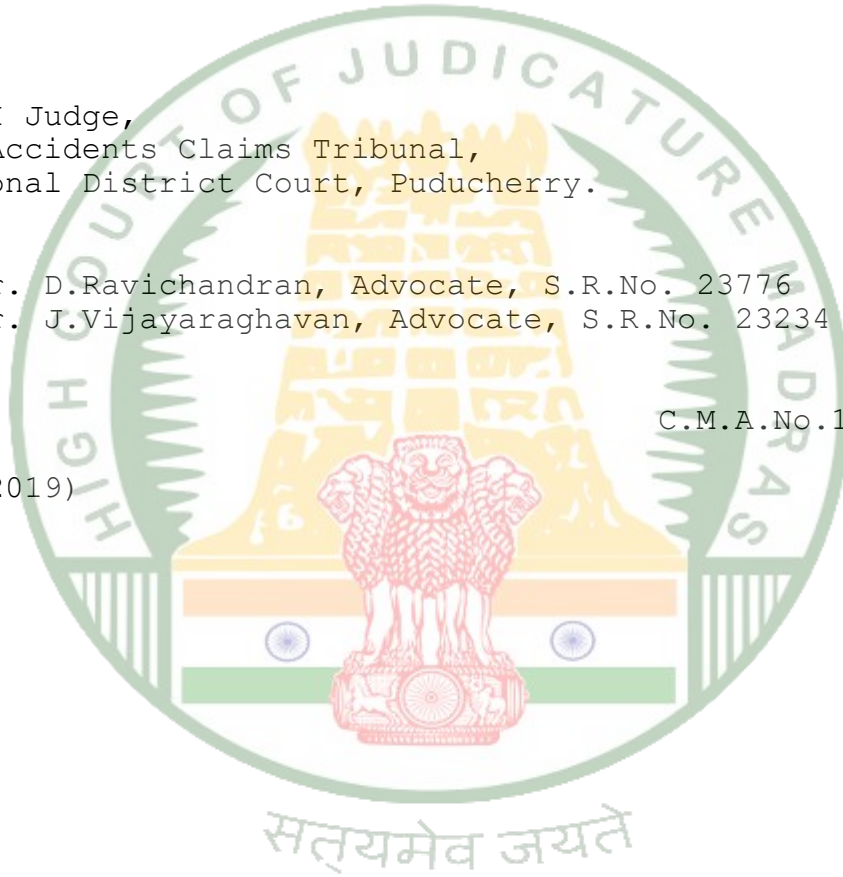
+1cc to Mr. D.Ravichandran, Advocate, S.R.No. 23776

+1cc to Mr. J.Vijayaraghavan, Advocate, S.R.No. 23234

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RG I(CO)

GN(03/10/2019)



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