

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.900 of 2015

P.Aanaimuthaiya ... Appellant/Petitioner

Vs.

1.Dr.M.J.Anandkumar

2.ICICI Lombard General Insurance Company Ltd,  
No.140, 3<sup>rd</sup> floor,  
Nungambakkam High Road,  
Chennai - 600 034. ... Respondents  
(R1 set ex-parte in the Lower Court)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.08.2014 made in M.C.O.P.No.3701 of 2012, on the file of the VI Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.A.Shanmugaraj

For R1 : Ex-parte

For R2 : M/s.R.Sreevidhya

J U D G M E N T

The Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 26.08.2014 made in M.C.O.P.No.3701 of 2012, on the file of VI Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The brief facts is as follows:

On 06.06.2011 at about 06.00 pm, while the petitioner was standing at South Usman Road. At that time, the rider of motor cycle bearing Registration No.TN-22-BS-7683 belonging to the first respondent insured by the second respondent ridden by its rider in a rash and negligent manner. Thereby the petitioner sustained grievous injuries, the appellant filed a claim petition against them before the VI Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai. Claiming a sum of Rs.3,00,000/-.

3.The Tribunal, after considering the pleadings, the documents placed before the awards as a sum of Rs.2,39,500/- as compensation under the following heads:

| S.No | Particulars                                               | Amount in Rs. |
|------|-----------------------------------------------------------|---------------|
| 1.   | Medical Expenses                                          | 5,000/-       |
| 2.   | Disability of 40% at the rate of Rs.3000/- per percentage | 1,20,000/-    |
| 3.   | Loss of Income for 3 months (3x6500)                      | 19,500/-      |
| 4.   | Transportation                                            | 5,000/-       |
| 5.   | Extra nourishment                                         | 5,000/-       |
| 6.   | Attender charges                                          | 5,000/-       |
| 7.   | Damage to clothes                                         | 25,000/-      |
| 8.   | Loss of Amenities                                         | 25,000/-      |
| 9.   | Pain and sufferings                                       | 25,000/-      |
| 10.  | Loss of Expectation of life                               | 25,000/-      |
|      | Total                                                     | 2,59,500/-    |

4.In the grounds of an appeal it is contended that the Motor Accidents Claims Tribunal ought to have considered the ortho disability certificate which was assessed by the experts Dr.N.Sai Chandran (PW-2) to the tune of 45% and Ophthalmic disability (eye disability) which was assessed by Dr.Rajappa (PW-3) to the tune of 15% and thus come to conclusion that the Appellant/Petitioner is having the total disability of 45+15=60% and further contended that the Motor Accidents Claims Tribunal ought to have reduced the disability of Appellant/petitioner from 60% to 40% in the absence of contra evidence and further contended that the Motor Accidents Claims Tribunal ought to have awarded a sum of Rs.1,80,000/- (60 x 3000) under the head of permanent disability, as per the judgment reported in 2013 (2) TNMAC 583 instead of awarding of Rs.1,20,000/- and further contended that the Motor Accidents Claims Tribunal ought to have come to a conclusion that the Appellant/Petitioner aged about 48 years was earned a sum of Rs.9,000/- Per Month (Rs.300 x 30) by vending Bonda & Bajji and after the accident he could not continue that work and further contended that the Motor Accidents Claims Tribunal ought to have awarded compensation separately under the head of loss of earning, as per the

judgment of Supreme Court reported in 2008 ACJ 9 (SC), 2010 (1) TNMAC 253 (SC) and 2011 ACJ 1971 (SC).

5.Hence on the whole the appellant contended that the award of the Tribunal is not a reasonable one and just compensation is ought to have been awarded and hence for seeking the said award and for enhancement.

6.Heard the learned counsel on either side and perused the materials available on record.

7.On perusal of records, it is observed that the appellant sustained grievous injury due to the said accident and the nature of injury also clearly deposed before the Tribunal along with the documents as well as evidence of two doctors assessed disability of the appellant claimant. The appellant claimant took treatment only in Puthur Hospital for one month.

8.It is contended that the accident occurred on 06.06.2011 and immediately he was taken to hospital and were the OP sheet was issued and the treatment given only in the Puthur Hospital. Hence, the evidence of two doctors are very much relating to the injury in the right side of the shoulder joint causing fracture of spine of the scapula in the right shoulder of the said injury. It is argued to the learned Counsel for the 2<sup>nd</sup> respondent that there are no documents to prove how the deceased is disability at 60% by two doctors. However, the Tribunal has taken 40% in the absence of all these relevant documents. With regard to the injuries, the accident registered and the discharge summary are all cordially with each other. Only the claimant contended the claim application that he has sustained fracture in the right shoulder. Hence, in the absence of any relevant documents regarding the nature of injuries also sustained and the assessment made by the doctors this sum awarded by the Tribunal is also on the higher side. There is also no relevant documents for providing the fact the loss of amenities and loss of expectations and loss of income prayed to set aside the award passed by the Tribunal.

9.The sum awarded for transportation is Rs.5,000/- has to be properly modified to Rs.10,000/- and the extra nourishment is at Rs.10,000/- and medical expenses Rs.5,000/- and permanent disability at Rs.1,20,000/- has to be modified Rs.1,80,000/- to be taken at 60% disability (3000X60), and loss of amenities is at Rs.50,000/- and Pain and sufferings is at Rs.50,000/- the sum awarded by loss of expectations is set aside.

10. However the Tribunal has assessed the disability at 40% and also considering the sum of Rs.3,000/- per percentage has been awarded a sum of Rs.1,20,000/- is very much reasonable. The sum awarded under the head of loss of income during the treatment period in the absence of prove of income and occupation the Tribunal has taken monthly income of the injured person at Rs.6,500/- and loss of income has been modified at Rs.19,500/-. Even in the Tribunal has also awarded a sum of Rs.19,500/- and loss of income for the treatment period and which need not be altered. Since the nature of injuries sustained by him requires a reasonable time for treatment and have continue his occupation. In view of the modification with regard to the expenses incurred by him for enhancement of Rs.10,000/- is extra nourishment. 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.   | Medical expenses            | 5,000/-                         | 5,000/-                           | Confirmed                              |
| 2.   | Permanent Disability        | 1,20,000/-<br>(3000x40)         | 1,80,000/-<br>(3000x60)           | Enhanced                               |
| 3.   | Loss of Income              | 19,500/-                        | 19,500/-                          | Confirmed                              |
| 4.   | Transportation              | 5,000/-                         | 10,000/-                          | Enhanced                               |
| 5.   | Extra Nourishment           | 5,000/-                         | 10,000/-                          | Enhanced                               |
| 6.   | Attender Charges            | 5,000/-                         | 5,000/-                           | Confirmed                              |
| 7.   | Damages to clothes          | 5,000/-                         | 5,000/-                           | Confirmed                              |
| 8.   | Loss of amenities           | 25,000/-                        | 50,000/-                          | Enhanced                               |
| 9.   | Pain and Sufferings         | 25,000/-                        | 50,000/-                          | Enhanced                               |
| 10.  | Loss of Expectation of life | 25,000/-                        | -                                 | Set aside                              |
|      | Total                       | Rs.2,39,500/-                   | Rs.3,34,500/-                     | enhanced by Rs.95,000/-                |

11.In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,39,500/- is hereby enhanced to Rs.3,34,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

12.The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. 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. On such deposit, the appellant is permitted to withdraw the amount along with proportionate interest and costs, less the amount if any, already withdrawn.

Sd/-  
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

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To

1.The VI Judge,  
Small Causes Court,  
Motor Accident Claims Tribunal,  
Chennai.

2.The Section Officer,  
VR Section,  
High Court, Madras.

+1cc to Mr.A.Shanmugaraj, Advocate Sr.63633

+1cc to Ms.R.Sreevithya, Advocate Sr.63923

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BS(CO)  
srg 30/06/2021