

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.442 of 2016

Jayammal

.. Appellant/Petitiner

Vs.

1.A.Anandhan

2.The National Insurance Co. Ltd.,
No.661, Trunk Road, Poonamallee,
Chennai - 600 056.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.07.2012 made in M.C.O.P.No.454 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District & Sessions Court - III, Poonamallee.

For Appellant : Ms.S.Ramya
for Mr.J.Mahalingam

For R2 : Mr.J.Chandran

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 20.07.2012 made in M.C.O.P.No.454 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District & Sessions Court - III, Poonamallee.

2.The appellant is claimant in M.C.O.P.No.454 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District & Sessions Court - III, Poonamallee. She filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by her in the accident that took place on 04.05.2005. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred

due to rash and negligent riding by the rider cum owner of the motorcycle belonging to the 1st respondent and directed 2nd/respondent Insurance Company to pay a sum of Rs.53,000/- 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 claim at Rs.3,00,000/- the sum awarded by the Tribunal at Rs.53,000/- in all heads are on the meagre side. But it is clearly deposed before the Tribunal that the appellant was working as sithaal and was earning a sum of Rs.250/- per day. Further contended that the appellant sustained fracture neck of right humerus, contusion over right maxillary region, tenderness over left lower chest region, head injuries and other serious multiple injuries all over the body. The appellant took treatment at Government Royapettah Hospital as out-patient and further continued her treatment as out-patient for six months. These aspects were not properly considered by the Tribunal. PW2/Doctor who examined the appellant and assessed the disability at 25%. The future loss of earning power not properly considered by the Tribunal. The sum awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal after considering both oral and documentary evidence in proper perspective, has awarded compensation which is not excessive and prayed for dismissal of the appeal.

5.Heard Ms.S.Ramya for Mr.J.Mahalingam learned counsel appearing for the appellant as well as the Mr.J.Chandran, learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

6.From the materials available on record, it is seen that the appellant was working as Sithaal and was earning a sum of Rs.250/- per day. Due to the injuries sustained by her she is unable to do work as she was doing earlier. PW2/Doctor deposed that the appellant is feeling pain in the fractured place experiencing difficulties due to right shoulder range of motion reduced by 50% muscle power reduced 40% and inability to lifting heavy objects and doing heavy works and he has assessed partial permanent disability at 25% as per Ex.P4/disability certificate. But the Tribunal deposing that the appellant has not surgically treated and she has not explained in detail anything about her inability or immobility in doing her regular work. Under such circumstances, the Tribunal totally awarded a sum of Rs.40,000/- towards partial permanent disability and loss of earning power

which is proper and reasonable. The appellant underwent treatment as in-patient for one day i.e. on 04.05.2005 at Government Royapettah Hospital. Hence the sum awarded by the Tribunal towards loss of earning during the period of treatment at Rs.2,250/- is very reasonable and does not require any modification. The sum awarded by the Tribunal towards transportation, extra nourishment and pain & suffering are meager and the same are enhanced to Rs.5,000/-, Rs.5,000/- and Rs.10,000/- respectively under those heads. The Tribunal has not awarded any amount towards loss of amenities and this Court grants a sum of Rs.5,000/- towards loss of amenities. The sum awarded but the Tribunal towards damages to clothing and articles is proper and reasonable. 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)
1.	Loss of earning	Rs.2,250/-	Rs.2,250/-
2.	Transportation	Rs.1,750/-	Rs.5,000/-
3.	Extra nourishment	Rs.1,500/-	Rs.5,000/-
4.	Damages to clothing and articles	Rs.500/-	Rs.500/-
5.	Loss of pain and suffering	Rs.7,000/-	Rs.10,000/-
6.	Partial permanent disability	Rs.40,000/-	Rs.40,000/-
7.	Loss of amenities	-	Rs.5,000/-
	Total	Rs.53,000	Rs.67,750/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.53,000/- is enhanced to Rs.67,750/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No costs.

8. 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 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 enhanced award amount, now determined by this Court along with interest and costs, less the amount if any, already withdrawn.

Sd/-
Assistant Registrar (AD-I)

//True copy//

Sub Assistant Registrar

mtl

To

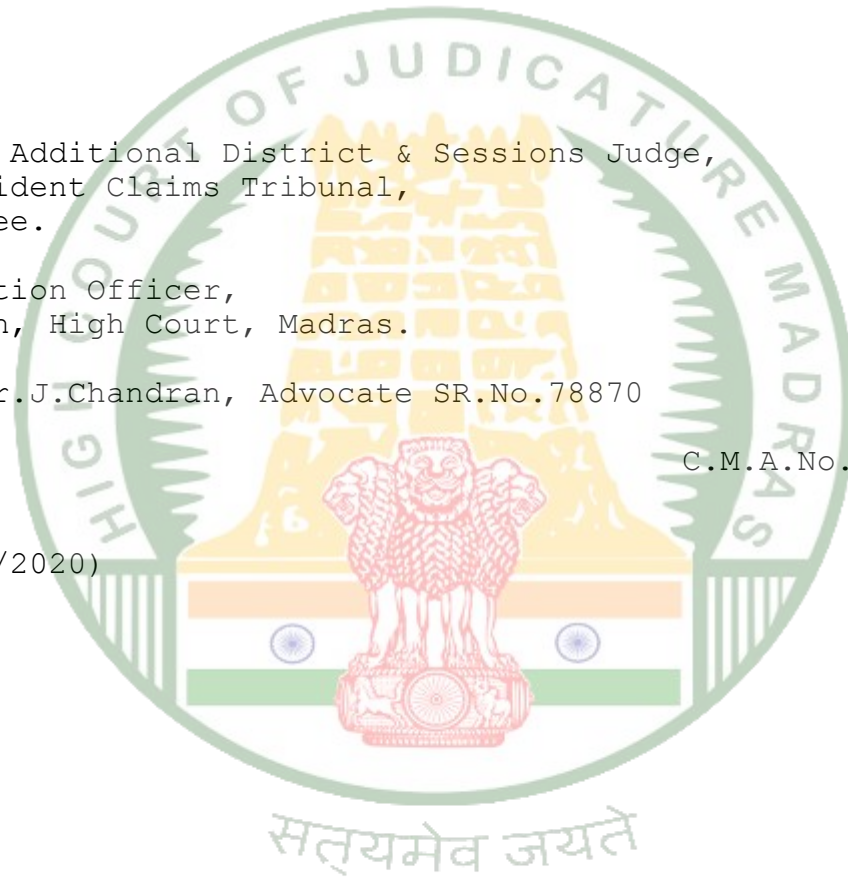
1.The III Additional District & Sessions Judge,
Motor Accident Claims Tribunal,
Poonamallee.

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

+1cc to Mr.J.Chandran, Advocate SR.No.78870

C.M.A.No.442 of 2016

CP (CO)
GMY (21/05/2020)



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