

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.Nos.239 and 1133 of 2018
and C.M.P.No.2629 of 2018

The New India Assurance Co. Ltd.,
No.7, B.K.Building,
Ramalinga Mudalayar Street,
Gugai, Salem - 6.

... Appellant/2nd Respondent
in C.M.A.No.239/2018

Jegadeesan

.. Appellant/ Petitioner
in C.M.A.No.1133/2018

Vs.

1.Jegadeesan

2.Vinayaga Mission Research Foundation,
44-A, Second Agraharam,
Salem Taluk and District.

(R2 was set exparte before the Tribunal)

...2nd Respondent/
/1st Respondent in C.M.A.No.239/2018

1.Vinayaga Mission Research Foundation,
44-A, Second Agraharam,
Salem Taluk and District.

2.The New India Assurance Co. Ltd.,
No.7, B.K.Building,
Ramalinga Mudalayar Street,
Gugai, Salem - 6.

(Notice to R1 may be dispensed
with for they were set ex-parte before the Tribunal)

...Respondents/Respondents in C.M.A.No.1133/2018

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 12.08.2017 made in M.C.O.P.No.856 of 2011 on the file of the Sub Court, (Motor Accidents Claims Tribunal), Sankari.

(In C.M.A.No.239/2018)

For Appellant : Mr.C.Ramesh Babu

For R1 : Mr.T.S.Arthanareeswaran

(In C.M.A.No.1133/2018)

For Appellant : Mr.T.S.Arthanareeswaran

For R2 : Mr.C.Ramesh Babu

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed against the award and decree dated 12.08.2017 made in M.C.O.P.No.856 of 2011 on the file of the Sub Court, (Motor Accidents Claims Tribunal), Sankari.

2.Both the appeals arise out of the same award and hence, they are disposed of by this common judgment.

3.The parties are referred to as per their rank in the claim petition.

4.The claimant filed M.C.O.P.No.856 of 2011 on the file of the Sub Court, (Motor Accidents Claims Tribunal), Sankari, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 04.09.2011.

5.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Omni Van belonging to the 1st respondent and insured with the 2nd respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.9,60,000/- as compensation to the claimant.

6.Against the said award of the Tribunal, the 2nd respondent-Insurance Company has filed C.M.A.No.239/2018, questioning the liability as well as the quantum of compensation.

7. Not being satisfied with the compensation awarded by the Tribunal, the claimant has come out with C.M.A.No.1133/2018 for enhancement of compensation.

8. The learned counsel appearing for the 2nd respondent-Insurance Company contended that at the time of accident three persons travelled in the two-wheeler contrary to the statutory provisions and contributed negligence for the accident. The Tribunal on erroneous reason, did not fix contributory negligence on the claimant. P.W.2-Doctor has assessed the disability at 49%, which is excessive. The Tribunal failed to see that the claimant has not produced any certificate from Medical Board. The Tribunal having held that the percentage of disability fixed by the Doctor is excessive, erred in granting compensation by adopting multiplier method. The Tribunal has awarded amounts for medical expenses and future medical expenses, without examining the author of the documents. The injuries sustained by the claimant do not attract provisions of Section 142 of the Motor Vehicles Act, 1988 and do not fall under Part I and Part II of Schedule 1 of the W.C Act, 1923.

9. Per contra, the learned counsel appearing for the claimant contended that the claimant travelled only as a pillion rider and he has not contributed any negligence for the accident. The Tribunal has considered the materials on record and rejected the contention of the 2nd respondent by giving valid reason. The claimant examined P.W.2-Doctor and proved the nature of injuries sustained by him, treatment taken by him and the percentage of disability suffered by him. The claimant was 21 years at the time of accident and he was working as a Carpenter and he lost his entire earning power. Due to the injuries suffered, his right toe in the leg was amputated and he suffered total functional disability and could not do his carpentry work as he was doing earlier. The Tribunal having held that the claimant suffered functional disability, ought to have fixed 80% functional disability and awarded compensation. Further, the learned counsel appearing for the claimant contended that the amounts awarded by the Tribunal under different heads are also very meager and prayed for enhancement of compensation.

10. Heard the learned counsel appearing for the claimant as well as the 2nd respondent-Insurance Company and perused all the materials available on record.

11. From the materials on record and the contention of the learned counsel for the parties, it is clear that three persons travelled in the two-wheeler at the time of accident. More than

two persons travelling in a two-wheeler is violation of statutory provisions. In the judgment reported in 2003 1 MLJ 489 (DB) [Managing Director, Tamil Nadu State Transport Corporation (Coimbatore Division I) Limited, Coimbatore, formerly Cheran Transport Corporation, Coimbatore], it has been held that three persons travelling in two-wheeler is unauthorised and illegal. In the judgment, the Division Bench of this Court held that when three persons travel in a two-wheeler, the rider of the two-wheeler almost sits on the petrol tank and his position is so cramped that his movements are restricted and he cannot have complete control over the brake. In the judgment, this Court fixed contributory negligence on the part of the rider of two-wheeler. The persons who are travelling as a pillion rider also contribute negligence as the rider of the motor cycle, as stated above could not have proper control as more than two persons travel in the two-wheeler. The reasons given by the Tribunal for rejecting the contention of the 2nd respondent-Insurance Company that the claimant travelled only as a pillion is erroneous and the said finding is hereby set aside. This Court holds that the claimant also contributed negligence for the accident and taking into consideration that the claimant travelled as a pillion rider, fixes the contributory negligence on the claimant at 10%.

12.As far the quantum of compensation is concerned, the claimant has examined P.W.2-Doctor and proved that he suffered functional disability. The 2nd respondent-Insurance Company has not examined any Doctor to disprove the evidence of the claimant and evidence of P.W.2. Considering the evidence of P.W.2 and documents relied on by the claimant, the Tribunal by giving valid reason, applied the multiplier method. The Doctor has certified that the claimant suffered 49% disability. The Tribunal has rejected 3% for pain and suffering and awarded compensation for 46%. The contention of the learned counsel appearing for the claimant that the Tribunal ought to have awarded compensation for 80% is not supported by any evidence. The claimant is entitled for compensation for entire 49%. Hence, the amount awarded by the Tribunal for loss of earning capacity is modified to Rs.8,46,720/- [Rs.8,000 x 12 x 18 x 49%]. The claimant is entitled for loss of income for four months during and after treatment period. Hence, a sum of Rs.32,000/- [Rs.8,000 x 4] is granted towards loss of income. The claimant underwent surgeries and plates were inserted. He has to undergo another surgery for removing the plates. The amounts awarded by the Tribunal for pain and suffering, transportation, extra nourishment, attender charges and future medical expenses are meager. Hence, they are hereby enhanced to Rs.30,000/-, Rs.10,000/- Rs.30,000/-, Rs.15,000/- and Rs.50,000/- respectively. The amounts granted by the Tribunal under all other heads are just and reasonable and they are hereby confirmed. 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.	Loss of earning capacity	7,95,000/-	8,46,720/-	enhanced
2.	Medical expenses	1,16,000/-	1,16,000/-	confirmed
3.	Pain and suffering	10,000/-	30,000/-	enhanced
4.	Transportation	5,000/-	10,000/-	enhanced
5.	Extra nourishment	10,000/-	30,000/-	enhanced
6.	Attender charges	3,000/-	15,000/-	enhanced
7.	Future medical expenses	20,000/-	50,000/-	enhanced
8.	Loss of estate	1,000/-	1,000/-	confirmed
9.	Loss of income	-	32,000/-	granted
	Total	9,60,000/-	11,30,720/- Rounded off to Rs.11,30,700	enhanced by Rs.1,70,700/-

13. In the result, the appeal filed by the claimant in C.M.A.No.1133 of 2018 is partly allowed and award granted by the Tribunal at Rs.9,60,000/- is enhanced to Rs.11,30,700/- along with interest and costs. The 2nd respondent is directed to deposit 90% of the enhanced award amount i.e., Rs.10,17,630/- 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, to the credit of M.C.O.P.No.856 of 2011. On such deposit, the claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary applications before the Tribunal. C.M.A.No.239 of 2018 filed by the 2nd respondent-Insurance Company is also

partly allowed. No costs. Consequently, connected Miscellaneous
Petition is closed.
gsa

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
(Motor Accidents Claims Tribunal), Sankari.

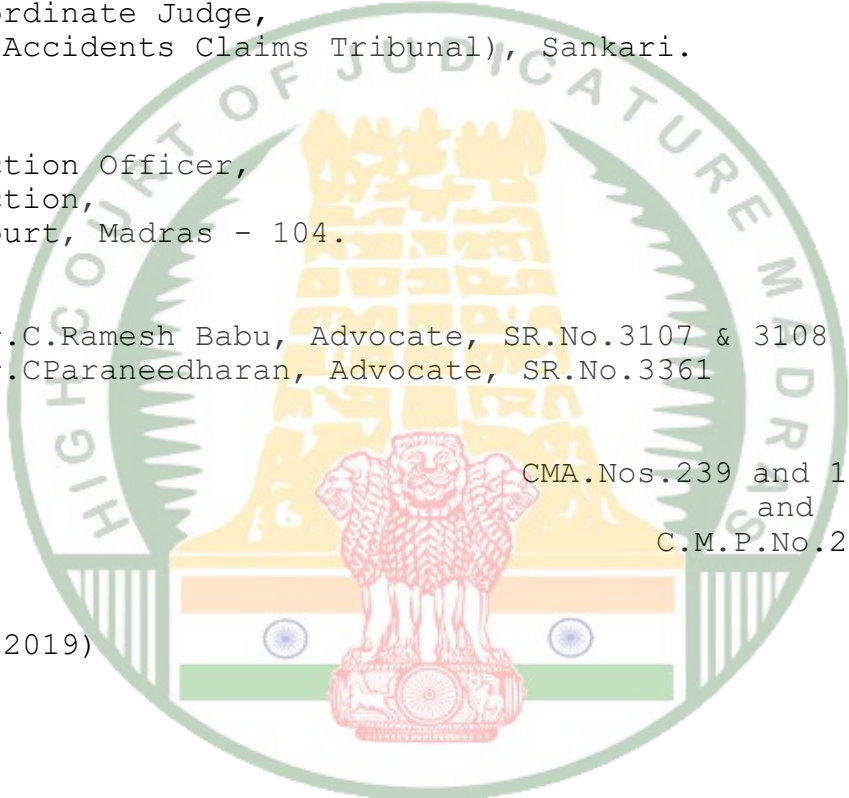
Copy to:-

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

+2cc to Mr.C.Ramesh Babu, Advocate, SR.No.3107 & 3108
+1cc to Mr.CParaneedharan, Advocate, SR.No.3361

CMA.Nos.239 and 1133 of 2018
and
C.M.P.No.2629 of 2018

Kak(02/05/2019)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital in front of it. The lion capital is set against a background of the Indian national flag's saffron, white, and green horizontal stripes. The words "HIGH COURT OF JUDICATURE MADRAS" are inscribed in a green circle around the central image. Below the seal, the motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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