

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.628 of 2018

Jayalalitha

.. Appellant / Petitioner

Vs.

1.Kathavarayan

(R1 remained exparte before the Tribunal
his presence may be dispensed with)

2.Reliance General Insurance Co., Ltd.,
Rai's Towers, 2nd Floor, No.2054,
2nd Avenue, Annanagar,
Chennai - 600 040.

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under
Section 173 of Motor Vehicles Act, 1988, against the judgment
and decree dated 20.06.2016 made in M.C.O.P.No.2544 of 2012 on
the file of the Motor Accident Claims Tribunal, VI Court of
Small Causes, Chennai.

For Appellant : Ms.A.Subadra

For R2 : Mr.S.Arunkumar

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 20.06.2016 made in
M.C.O.P.No.2544 of 2012 on the file of the Motor Accident Claims
Tribunal, VI Court of Small Causes, Chennai.

2.The appellant is claimant in M.C.O.P.No.2544 of 2012 on
the file of the Motor Accident Claims Tribunal, VI Court of
Small Causes, Chennai. she filed the said claim petition
claiming a sum of Rs.6,00,000/- as compensation for the injuries
sustained by her in the accident that took place on 02.02.2011.
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 auto belonging to the 1st
respondent and directed the 2nd-respondent Insurance Company

being the insurer of the auto to pay a sum of Rs.1,23,500/- 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.

4.The learned counsel appearing for the appellant contended that the appellant sustained fracture and lost three teeth and injuries all over the body. In the accident, she took treatment as in-patient from 02.02.2011 to 18.02.2011. The appellant was examined by P.W.2 & P.W.3-Doctors who have certified 85% total disability suffered by the appellant. P.W.2-Doctor assessed 30% of disability for loss of three teeth and P.W.3-Doctor assessed 55% of disability for the fracture of left tibia bone and dislocation of left knee. In fact the appellant has suffered 100% disability. The Tribunal has erroneously reduced the percentage of disability to 25% and granted only Rs.75,000/- towards disability. The amount awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

5.Per contra, Mr.S.Arunkumar, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the evidence of P.W.1 to P.W.3, the documents filed and marked, held that the percentage of disability assessed by P.W.2 and P.W.3 are on the higher side and the discharge summary produced by the appellant does not contain medical officer's name, hospital seal and reduced the percentage of disability to 25% by giving valid reason. The appellant has not proved that he has suffered 100% disability. The total compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

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

7.From the materials available on record, it is seen that the appellant has sustained injuries, he has taken treatment from 02.02.2011 to 18.02.2011 as in-patient. The appellant was examined by P.W.2 & P.W.3 -Doctors to prove the same. P.W.2-Doctor has certified that the appellant suffered 30% disability for loss of three teeth. P.W.3-Doctor assessed that the appellant has suffered 55% disability for the fracture of left tibia bone and dislocation of left knee. The Tribunal considering the evidence of P.W.2 & P.W.3 in the cross examination as well as discharge summary, reduced the percentage of disability to 25% (10%+ 10% + 5%). Considering the entire materials on record, the percentage of disability fixed by the Tribunal is meagre. Considering the above materials, this Court fixes disability at 40% (15% + 15% + 10%). The appellant has not

proved that she suffered functional disability and hence the appellant is entitled to compensation only by percentage basis. A sum of Rs.1,20,000/- is granted towards 40% disability at the rate of Rs.3,000/- per percentage. The appellant was taking treatment in hospital as in-patient from 02.02.2011 to 18.02.2011. The amounts awarded by the Tribunal towards Attendant charges, Transport charges & Extra nourishment and loss of amenities, are meagre and the same are hereby enhanced to Rs.15,000/-, Rs.20,000/- and Rs.20,000/- respectively. The Tribunal has not awarded any amount towards damages to cloth and loss of income and this Court awards a sum of Rs.2,000/- and Rs.25,000/- respectively. 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.	Towards pain and sufferings	20,000	20,000	Confirmed
2.	Attender charges	8,500	15,000	Enhanced
3.	Transport and extra nourishment	10,000	20,000	Enhanced
4.	Loss of earning capacity	75,000	1,20,000	Enhanced
5.	Loss of amenities	10,000	20,000	Enhanced
6.	Damages to cloth	-	2,000	Granted
7.	Loss of income	-	25,000	Granted
	Total	Rs.1,23,500/-	Rs.2,22,000/-	Enhanced by Rs.98,500/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,23,500/- is hereby enhanced to Rs.2,22,000/- 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 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, along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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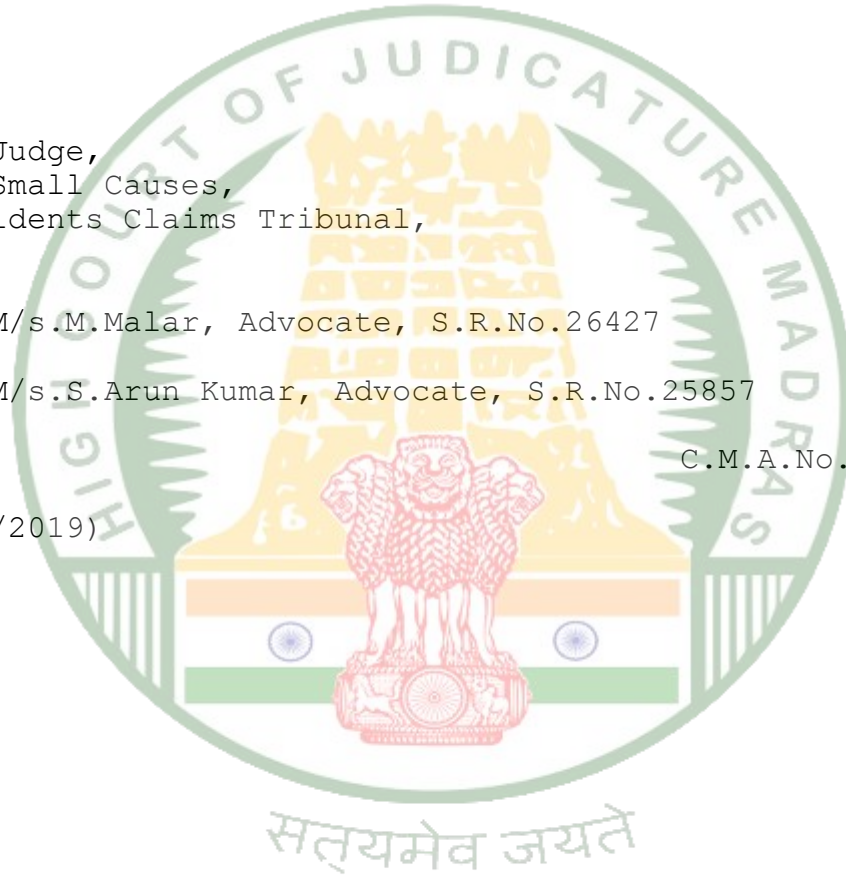
1.The VI Judge,
Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.

+1 cc to M/s.M.Malar, Advocate, S.R.No.26427

+1 cc to M/s.S.Arun Kumar, Advocate, S.R.No.25857

C.M.A.No.628 of 2018

PPA(CO)
SSM(03/09/2019)



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